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New York

President:	Mr. Rammell	(United Kingdom)
Members:	Algeria	Mr. Benmehidi
	Angola	Mr. Gaspar Martins
	Benin	Mr. Adechi
	Brazil	Mr. Sardenberg
	Chile	Mr. Maquieira
	China	Mr. Zhang Yishan
	France	Mr. De La Sablière
	Germany	Mr. Pleuger
	Pakistan	Mr. Akram
	Philippines	Mr. De Venecia
	Romania	Mr. Motoc
	Russian Federation	Mr. Denisov
	Spain	Mr. Yáñez-Barnuevo
	United States of America	Mr. Danforth

Agenda

Justice and the rule of law: the United Nations role

Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616)

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04-53759 (E)

The meeting was called to order at 10.40 a.m.

Adoption of the agenda

The agenda was adopted.

Justice and the rule of law: the United Nations role

Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616)

The President: I should like to inform the Council that I have received letters from the representatives of Argentina, Australia, Austria, Belarus, Burundi, Canada, Costa Rica, Fiji, Finland, India, Indonesia, Japan, Jordan, Liechtenstein, Mexico, the Netherlands, Nigeria, Peru, the Republic of Korea, Saint Vincent and the Grenadines, Sierra Leone, Singapore, South Africa, Sweden, Switzerland and Uganda in which they request to be invited to participate in the discussion of the item on the Council's agenda. In conformity with the usual practice, I propose, with the consent of the Council, to invite those representatives to participate in the discussion without the right to vote, in accordance with the relevant provisions of the Charter and rule 37 of the Council's provisional rules of procedure.

There being no objection, it is so decided.

At the invitation of the President, the representatives of the aforementioned countries took the seats reserved for them at the side of the Council Chamber.

The President: In accordance with the understanding reached in the Council's prior consultations, I shall take it that the Security Council agrees to extend an invitation under rule 39 of its provisional rules of procedure to Mr. Juan Méndez, Special Adviser to the Secretary-General on the Prevention of Genocide and Director of the International Centre for Transitional Justice.

It is so decided.

I invite Mr. Méndez to take a seat at the Council table.

I should like to inform the Council that I have received a letter dated 1 October 2004 from the Permanent Observer of Palestine to the United Nations, which will be issued as document S/2004/793, and which requests that the Security Council invite the Permanent Observer of Palestine to participate in the open debate on "Justice and the rule of law: the United Nations role".

I propose, with the consent of the Council, to invite the Permanent Observer of Palestine to participate in the meeting, in accordance with the rules of procedure and the previous practice in this regard.

There being no objection, it is so decided.

I invite the Permanent Observer of Palestine to take the seat reserved for him at the side of the Council Chamber.

The Security Council will now begin its consideration of the item on its agenda.

Members of the Council have before the report of the Secretary-General – whose presence here this morning I very warmly welcome – on the rule of law and transitional justice in conflict and post-conflict societies, document S/2004/616.

At this morning's meeting, we will first hear an introduction by the Secretary-General of his report. Thereafter we will hear a briefing by Mr. Juan Méndez, Special Adviser to the Secretary-General on the Prevention of Genocide and Director of the International Centre for Transitional Justice.

In the afternoon, we will hear a briefing by Mr. Mark Malloch Brown, Administrator of the United Nations Development Programme.

I should like very briefly to say, in welcoming this debate, that this is an initiative that we launched just over a year ago. I think that there has been significant interest in this issue and that there is a developing consensus. I hope that we are going to have a very constructive debate today, building on the work of the Secretary-General's report and taking these critically important issues forward. I am certainly very pleased to be here to witness these proceedings.

I welcome the presence of the Secretary-General and invite him to take the floor.

The Secretary-General: Mr. President, let me start by warmly welcoming you to New York and to the Security Council and expressing appreciation for your having convened this open debate. It could not be more timely.

A few weeks ago, in the General Assembly, I said that reintroducing the rule of law, and ensuring confidence in its impartial application, is an essential part of resuscitating societies shattered by conflict.

That principle lies at the heart of the report before the Council today — a report that reflects the coordinated efforts of more than a dozen United Nations departments and agencies, based on our own experience over decades of involvement in this field.

The report reviews the tools at our disposal to help administer transitional justice and rebuild the rule of law in conflict and post-conflict societies — from national justice systems to the support given by United Nations peace operations; from the International Criminal Court to ad hoc international and mixed tribunals and truth commissions; from public-sector vetting to reparations for victims.

As the report points out, the work of the United Nations in this field has taught us many lessons.

The first is that, to be successful, peace-building activities must reflect international norms and standards. But that does not mean that we should uncritically import or impose foreign models. One size does not fit all. Our support needs to be carefully tailored to the context and based on national assessments, national participation and national needs and aspirations.

Secondly, we must be provided with the resources needed for a sustainable investment in justice. These resources must help build local capacity, but simply providing technical assistance is not enough. We must also help foster and sustain political will at the national level. We should therefore support domestic reform constituencies and facilitate national consultations on justice reform and transitional justice.

Thirdly, we cannot forget the political context. Peace and stability can prevail only if the causes of conflict are addressed in a legitimate and fair manner — causes such as ethnic discrimination, gross disparities in the distribution of wealth and social services, abuse of power, and the denial of the right to property or citizenship. Indeed, justice, peace and democracy are mutually reinforcing. In fragile post-conflict settings, our efforts must advance on all three fronts. That requires strategic planning, careful integration and sensible sequencing.

Fourthly, our approach to justice must be comprehensive. We must address the police, courts, prisons, defence lawyers and prosecutors, and we must be sensitive to the needs of civil society, including those of victims, women, children and minorities.

Fifthly, where transitional justice is concerned, the best approach is usually not an "either/or" choice between prosecutions and truth commissions. Instead, a nationally determined combination of mechanisms will generally work better — including, where appropriate, traditional justice mechanisms.

In some cases, international or mixed tribunals have been set up to address past crimes. Those tribunals have helped bring a measure of justice to victims, held at least some perpetrators to account, and helped remove extremist elements from power. They have also enriched the jurisprudence of international criminal law. But they have been expensive, and they have not contributed adequately to building sustainable national capacities for the administration of justice.

The report notes that the establishment of the International Criminal Court offers new hope for a permanent reduction in the phenomenon of impunity — a hope that will grow stronger with each new ratification of the Rome Statute.

The recommendations of the report are grouped together in section XIX. I hope it will serve as a practical aide-memoire for the Security Council, to help it pay due attention to the rule of law and transitional justice as it addresses the conflict and post-conflict situations before it.

I have not forgotten my own responsibilities and those of the United Nations departments, agencies, funds and programmes. The United Nations system is working on important new tools to help strengthen our capacities to support the rule of law and transitional justice. Those include a justice sector mapping guide, support for the development of model transitional criminal codes and policy guidance for domestic and hybrid prosecutions. The United Nations system will continue to work in the coming months to implement the recommendations in the report that are directed at us.

We are ready to play our part and trust that the members of the Council are ready to play theirs.

The President: I thank the Secretary-General for his statement, which I believe starts this debate off very effectively.

I now give the floor to the Special Adviser to the Secretary-General on the Prevention of Genocide, and the Director of the International Center for Transitional Justice, Mr. Juan Méndez.

Mr. Méndez: I am honoured to represent the International Center for Transitional Justice (ICTJ) to address the important issues raised by the Secretary-General's report on the rule of law and transitional justice in conflict and post-conflict societies. Several of my colleagues participated last week in a workshop convened by the Office of the United Nations High Commissioner for Human Rights in Geneva to discuss the tools that the United Nations must develop to be better prepared to implement transitional justice approaches. We are pleased to see that new approaches are already moving from general policy to operational design. The further stage of the Security Council's participation in the debate highlights the transcendental nature of the doctrine adopted by the United Nations on this subject and embodied in the Secretary-General's report.

The ICTJ was founded on the premise that societies in transition from dictatorship to democracy or from conflict to peace can find solutions to common problems by analysing experiences in different countries at different times. Official denial of mass crimes and an effort to condemn their victims to oblivion is often a feature of those transitions. To overcome them, some States have established truth-telling mechanisms to uncover the truth about and preserve the memory of past abuses. Atrocities are often met by de jure or de facto impunity, but there can be no transition to a more humane, just, and democratic order unless impunity is broken through prosecution, trial, and eventual punishment. Little or no effort is made to recognize the inherent dignity of victims; the remedy for that is a policy of reparations that restores the respect that societies owe to their most vulnerable members. Additionally, there is often a risk of abuses being repeated, especially if perpetrators are allowed to remain in positions of power.

Transitional societies must therefore reform their institutions and exclude perpetrators of human rights crimes from newly reconstituted institutions. Finally, societies that are still torn by underlying conflicts of a social, political, or ideological character, should consider conscious efforts to achieve reconciliation. Reconciliation should be viewed as the ultimate object and condition of the legitimacy of efforts to achieve transitional justice.

The problems that I have just described impose international law obligations on States undergoing transitions to remedy those violations. Although those obligations are universal, the policy mechanisms to put them in effect must allow for national customization and experimentation. Each society must find the set of tools and policy schemes suitable to the circumstances of its own transition. We, the international community, should avoid adopting initiatives that seem to work in other contexts, without a broad consultation with national stakeholders. We support the report's emphasis on national assessments and consultation processes designed to increase local legitimacy and ownership, thereby assuring a lasting legacy of tolerance and democratic values.

National ownership will reduce the risk that the work of the United Nations in this area will be perceived as a foreign imposition that runs roughshod over the richness and capabilities of local cultures. The inclusion of a commitment to transitional justice in peace agreements and United Nations mandates should not lead to premature decisions to apply untested models. The United Nations must invest from the start in outreach, public education and dissemination of the principles of transitional justice, as well as in the application of rule of law principles to the reform of State institutions. We recognize that the United Nations needs to increase its reservoir of expertise and capacities, and we hope that in so doing it draws on the wealth of knowledge that is present in civil society organizations, democratic Governments and academic institutions.

The Security Council can play a large role in enhancing the legitimacy of this evolving doctrine. In some cases it will be necessary to create international judicial instruments to provide redress to the victims of mass atrocities. When such tribunals are created under Chapter VII of the Charter, there is an explicit obligation on the part of all Member States to cooperate with their investigations, detentions and evidence-gathering. On the other hand, even when not acting under Chapter VII, the Security Council could explicitly mandate cooperation with mixed or hybrid courts and with the International Criminal Court,

which would help to clarify the scope of the obligations of third-party States to cooperate with those institutions. More significantly, however, it would signal that the international community is not so much interested in imposing its will on war-torn states, but that it recognizes that the restoration of justice and the rule of law is a common enterprise in which all States must play a part.

There is an increasing consensus among legal practitioners that truth and justice are not mutually exclusive alternatives. The temptation to establish a truth commission as a substitute for accountability should be resisted, however. The report's rejection of amnesty for international crimes such as genocide, war crimes and crimes against humanity is to be commended. We must also recognize that punishment without a full exploration of the facts and of historical and political responsibilities is equally inadvisable.

For those reasons, we should embrace a policy that assigns proper priorities to truth-seeking and truth-telling, as well as to bringing perpetrators to justice. The United Nations has played a major role in supporting the Truth and Reconciliation Commission in Sierra Leone, which submitted its final report to the President of Sierra Leone just yesterday. It has also been central to the operations of the Special Court for Sierra Leone. While the relationship between those institutions has not been without its difficulties, there is an increasing recognition that courts and commissions can complement each other's work.

There is also a long-standing debate as to whether the requirements of transitional justice objectively — as well as subjectively — complicate peace processes by creating disincentives for parties to a conflict to renounce violence. Those of us who approach the problem from a human rights perspective must humbly recognize that the prospect of being prosecuted for war crimes is not likely to persuade combatants to resolve the conflict by peaceful means.

For that reason, it is not so much that we object to peace agreements that are premised on impunity, but that we must insist that we can do better. A peace settlement that rejects impunity is a legal and moral imperative, but it must also address the grievances that gave rise to the conflict in the first place. That is why it is important to resist the blackmail of those who threaten to continue to fight and commit atrocities unless they are given immunity. Ceasefires and truces, however, should be encouraged at all times, and we may have to forgo immediate justice as long as we preserve the ability to address past wrongs in the future. These thorny questions are context-specific and cannot be resolved in an abstract debate. Yet, we believe it is important for future peace-making to end the easy resort to blackmail embodied in the promise of loose amnesties and other rewards for atrocities.

We applaud the call in the Secretary-General's report for the universal application of principles of gender equality to all aspects of transitional justice and the rule of law. At the ICTJ we are embarking upon a review of mechanisms and approaches to transitional justice to determine the degree to which they have been gender-sensitive in design and operation, and how similar exercises can be improved from that perspective. We endorse the report's call for the collection of documentation on best practices. In that regard, we would like to draw attention to the Moroccan Equity and Reconciliation Commission. Not only is it a highly promising process, but it also serves as a fascinating example for non-governmental organizations and Governments throughout the Middle East, North Africa and elsewhere. For that reason, Governments' handbooks, databases and tools must exist in multiple languages. We also encourage the development of a standard set of benchmarks to evaluate different transitional justice initiatives. The number of successful prosecutions and convictions, for example, is a definite consideration; yet institutions should also be evaluated by examining whether they have built the local capacity to deal with justice effectively in the present and in the future.

Finally, we commend the report's recommendation that the United Nations review its own structures and resources in this field. The United Nations already has an extensive track record on these issues. It will need additional resources and better coordination to address the challenges this report so eloquently identifies.

The President: I thank Mr. Méndez for his statement.

In accordance with the understanding reached among Council members, I wish to request that all speakers from now on limit their statements to no more than five minutes in order to enable the Council to carry out its work expeditiously. Delegations with lengthy statements are kindly requested to circulate the

texts in writing and to deliver a condensed version when speaking in the Chamber.

I now extend a warm welcome to the Speaker of the House of Representatives of the Philippines, His Excellency The Honourable Jose De Venecia.

Mr. De Venecia (Philippines): I would like to thank the delegation of the United Kingdom for organizing this meeting on the important topic of justice and the rule of law. My thanks also go to the Secretary-General for his comprehensive report, issued in August, on "The rule of law and transitional justice in conflict and post-conflict societies" (S/2004/616).

Nations typically emerge from civil conflicts traumatized by their collective memory of genocidal crimes, horrendous abuses of human rights and mindless social violence. It is often the case that very few in those societies emerge untouched by the humanitarian disasters set off by the collapse of political order, the rule of law and the mechanisms of justice. It therefore becomes extremely difficult to reverse the collapse of the State and restore its legitimate authority.

Well-meaning outsiders often assign the highest priority to demobilizing irregular militias and organizing new security forces to rebuild the peace and punish the guilty. Historical experience suggests that raising the issue of past crimes prematurely may only induce warlords and gang bosses to resist, with force, being called to account for their past actions, thus breaking the fragile and tentative peace. Pushing retributive justice too quickly can be both damaging and destabilizing to the still-fragile post-conflict State.

Justice must certainly be a key element in any process of national reconciliation in conflict and post-conflict societies. We must emphasize this, even if we recognize that retributive justice is not always feasible at the beginning of the process, if only because the transitional institutions are too weak to exact retribution.

The Philippine delegation broadly supports the recommendations contained in paragraphs 64 and 65 of the Secretary-General's report. We are confident that those recommendations will be carried out with both wisdom and patience, and with the realization that there are no quick fixes or one-size-fits-all formulas for restoring the rule of law in post-conflict societies. The Philippines supports United Nations involvement in rebuilding post-conflict societies because we know its sole objective is to build sustainable peace, a peace that will endure even after foreign peacemakers have left.

We must never forget, however, that the record of successful State reconstruction thus far is very insubstantial.

Let me thank a good number of United Nations delegations for considering the Philippine proposal in the General Assembly for an inter-faith dialogue in the United Nations system to promote civilizational reconciliation at the global level. Reconciliation always comes easier in an atmosphere of spirituality and faith.

I recall a statesman memorably saying that the twenty-first century will be defined by a simple choice that nations must make: whether to emphasize their ethnic, ideological and religious differences or their common humanity. Nations, however, can never make the right choice as long as their peoples insist "Our faith must reign supreme", since that claim can be affirmed only by the negation of all other faiths. I believe we must all learn to create space for alternative faiths if we are to find an alternative to so much violence and hatred and if we are to respond to the crisis of values that so pervades today's planet.

During the last two years, we in the Philippines have been strenuously promoting the need for global inter-religious understanding, supporting a dialogue among civilizations and cultures, specifically Christian-Muslim dialogue at the regional levels. Such dialogue should take place not only among political leaders but also among religious leaders and leaders of civil society to try to reduce the politico-religious and ethnic tensions and conflicts that have bedevilled regions and nations, societies and communities for hundreds of years and that have now exploded onto the scene in the first years of the twenty-first century.

I believe the religious sector has the moral influence to help the Security Council's efforts, particularly in conflicts with religious undertones. Because of its moral authority, the religious sector is well situated to deal with community-based issues, such as justice and the rule of law. Not only does it exemplify international society's respect for human dignity and individual worth, but often enough the religious sector is the only grouping in conflict and post-conflict societies that continues to function

coherently enough to serve as the foundation for rebuilding shattered communities. The religious sector could and should become an effective tool in achieving the international community's peace-building agenda. To date the international community has not fully tapped this sector's potential.

Last year, our delegation introduced a draft resolution in the General Assembly proposing the creation of an inter-religious council or a special committee in the United Nations to help address the problem of conflict resolution, reconciliation and the achievement of justice and the rule of law. Indeed, we think it would be a good idea for such a special committee for inter-religious or inter-faith understanding — mobilizing for the first time a crucial but neglected sector, the inter-religious sector — to engage religious leaders to work with political leaders and leaders of Government and civil society to contribute to peace and understanding and help resolve difficult ethnic and politico-religious conflicts such as those in Mindanao in my own country, in the Balkans, in the Middle East, in North Africa, in South Asia and South-East Asia and other areas of the world. We believe that the creation of an inter-religious council or a specific unit on inter-faith understanding in the United Nations system is an idea whose time has come.

Mr. Denisov (Russian Federation) (*spoke in Russian*): We too would like to thank the United Kingdom for the very useful proposal of holding this meeting today. The Secretary-General's report entitled "The rule of law and transitional justice in conflict and post-conflict societies" (S/2004/616) identifies a number of issues that require thorough consideration by the Security Council, Member States and organs of the United Nations, including the Secretariat. In particular, peacekeeping mandates must be improved. Many of them simply do not include tasks relating to transitional justice and ensuring the rule of law or do not always reflect the actual needs of the States in which missions are deployed. We share the Secretary-General's concern about this.

In that connection, I recall that a number of years ago in the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, the Russian Federation made a proposal to consider the question of the legal basis for United Nations peacekeeping operations, and we submitted a document in that regard. We think that perhaps the Special Committee might now resume work on our proposal.

We fully agree with the Secretary-General that one cannot count on the success and stability of reforms aimed at ensuring the rule of law when such reforms are imposed from outside and are not based on local traditions and conditions. The United Nations and the international community as a whole should not replace, but rather supplement and promote, national initiatives, including those in the areas of justice and law and order.

As members are aware, in the initial stages of United Nations efforts to ensure the rule of law in post-conflict societies, there was an emphasis on establishing rather expensive international criminal tribunals. Experience has now enabled us to introduce a number of corrective measures. For example, now we have mixed tribunals in which, in addition to international judges, there are local jurists. That not only makes it possible to train national cadres in the law, it also assists in the establishment of national legal systems to introduce democratic standards of justice and to enhance the overall level of a society's understanding and awareness of the law. Undoubtedly, one important stage in establishing the rule of law in conflict and post-conflict societies was the establishment of the International Criminal Court, which has just begun to consider its first criminal cases.

Here, I should like to touch upon one other fundamentally important aspect. Certainly, ensuring the rule of law and justice must be regarded as a fundamental goal of United Nations work for peace. However, that cannot be a goal in, of and by itself. In an attempt to provide justice in a number of cases, excessive zeal becomes a hindrance to peace, complicating the attainment or implementation of peace agreements. In such cases, one should make more active use of alternative mechanisms — truth and reconciliation commissions, for example.

The Secretary-General is currently working with Member States to reach an agreement on the formulation of a list of experts to provide assistance to post-conflict countries. Such a list would include experts to assist in organizing transitional justice, re-establishing a justice system that has been destroyed and ensuring the rule of law. It is understood that such specialists would be made available to the United

Nations when necessary. We support that proposal, and we are prepared to work with the Secretariat to reach such an agreement.

In general, Russia agrees with the contents of the report of the Secretary-General (S/2004/616) on strengthening the role of the Organization in establishing justice systems and ensuring the rule of law in conflict and post-conflict societies. In that connection, I should like to make the following point: there is one view on the need to establish a new coordinating structure within the United Nations on issues relating to the rule of law and transitional justice. We do not reject that idea; we are prepared to study it. But at the same time, we feel that increasing the number of bureaucratic mechanisms does not always lead to enhanced functioning and effectiveness of the system. We therefore urge the Executive Committee on Peace and Security — which the Secretary-General has asked to submit recommendations on matters covered in the report — to focus on finding ways to improve coordination within existing mechanisms.

Mr. Pleuger (Germany): The Secretary-General's report on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616) is, in our view, a landmark document. It represents a significant step forward in conceptualizing the rule of law and transitional justice and in explaining their relevance to the work of the United Nations.

I would like to associate myself with the statement to be made later today by the representative of the Netherlands, on behalf of the European Union. At the same time, I would like to thank the Secretary-General and the many members of the Secretariat who were involved in drafting the report for an outstanding job.

Germany wholeheartedly welcomes this report and pledges to work with the United Nations to translate its vision into concrete action. We will do that as a Security Council member, as a member of the General Assembly and of other relevant bodies of the United Nations system, as a State party to the Rome Statute of the International Criminal Court and as a donor country that is now already devoting a significant part of its assistance programmes to the promotion of judicial and non-judicial governance structures.

But let us be clear on one important point: the Secretary-General's report, as thorough and thoughtful as it may be, is only the beginning of a long-term agenda. Important and often difficult questions remain unresolved. Here, I am referring to policy questions such as the proper sequencing and timing of measures to promote peace, justice and reconciliation; to institutional questions such as the cooperation between the United Nations — notably the Security Council — and the International Criminal Court (ICC); and to resource questions. With regard to the latter, action by the United Nations must be complemented by assistance that States make available to each other if a State is in need of certain capacities, materials or expertise. The Council will urge Member States that are able to do so to contribute national expertise and materials.

In that context, I would like to draw the attention of members to the Justice Rapid Response Initiative, an initiative that a number of countries from all parts of the world — including Germany — have launched over the past few months. The starting point of that initiative was the realization that in post-conflict situations, it is likely that a State may be willing, but not entirely able, to take the necessary steps to investigate and prosecute some of the worst crimes — war crimes, crimes against humanity and genocide — owing to a lack of expertise and resources. The response to that dilemma may be that States possessing the required expertise or resources coordinate to provide, on short notice, cost-effective expertise and resources as necessary. Such expertise and resources could be used either to enhance the capabilities of States not fully able but willing to prosecute such crimes or to augment the capacities of international justice institutions, notably the ICC. Under either scenario, such Justice Rapid Response capabilities would be deployed only upon request.

The Governments and civil society experts who have worked together over the past few months to elaborate the Justice Rapid Response Initiative are convinced that offering effective assistance to States possessing plenty of political will but limited resources would be an important element to give true meaning to the idea of local ownership. The Justice Rapid Response Initiative is still a work in progress. States that may be interested in participating in the further refinement of the initiative are welcome to join it.

Allow me to devote the conclusion of my statement to one specific issue and to make this part of my statement on behalf also of Finland and the Hashemite Kingdom of Jordan. That issue concerns the institutional structures necessary to implement the report's extensive to-do lists.

Indeed, while the report explains the challenges and the future agenda for United Nations action in the field of the rule of law and post-conflict transitional justice, it does not directly address the question of which institutional changes would be necessary to enable the United Nations to better cope with the strengthening of justice and the rule of law. The report merely entrusts the Executive Committee on Peace and Security to make proposals for enhancing the United Nations system arrangements for supporting the rule of law and transitional justice in conflict and post-conflict societies.

Currently, the work of the United Nations in the field of the rule of law and transitional justice is divided among eleven departments and agencies within the system. Cooperation between the various actors is maintained through a Focal-Point Network, with a largely coordinating role. No office dedicated to the issue has yet been established. The current arrangement does not support the development of common policies and comprehensive strategies, nor does it allow for the accumulation of institutional memory, best practices and lessons learned.

Finland, Jordan and Germany believe that there is a need to create a new entity within the United Nations Secretariat, to enable the United Nations to operate more effectively in this cross-cutting area. Therefore, Finland, Germany and Jordan have elaborated a non-paper outlining possible models for the future organization of the rule of law and transitional justice activities within the United Nations system. We hope it will provide a starting point for discussions in the Executive Committee on Peace and Security on this issue. We remitted our non-paper to the Secretariat in a high-level démarche on 29 September. On 1 October, we sent the non-paper to all permanent missions, for your information.

Common to the models contained in the non-paper is the assumption that effective mainstreaming of any theme requires some institutional centre of gravity within the United Nations system. Mainstreaming cannot simply rely on occasional or periodic meetings or exchange of information.

The non-paper seeks to promote an entity responsible for all the policy work carried out by the United Nations in the area of the rule of law and transitional justice. From the beginning, it would have for its consideration and action numerous tasks highlighted in the report, such as reviewing best practices, developing proposals and overall policies for United Nations action; helping plan comprehensive national strategies; coordinating the efforts with actors from outside the United Nations system; updating and supplementing related United Nations material such as guidelines and manuals; directing the setting up of databases and web-based resources; creating and maintaining up-to-date rosters of experts; planning comprehensive training programmes for United Nations staff and other matters.

The non-paper also argues that core operations of the new entity should be funded from the regular budget, whereas operational activities would continue to be financed from the budgets of the implementing department and agencies.

We would like to emphasize that our non-paper does not intend to present ready-made solutions. Rather, it wishes to assist the Executive Committee on Peace and Security in its task to come forward with proposals of its own. We would be grateful if you, Mr. President, would see our distribution of the non-paper to permanent missions as an effort to draw your attention to a matter that in our view, needs urgent attention, and as an attempt to set out possible ways to approach the matter.

Mr. Akram (Pakistan): I would like to welcome you, Sir, to the Security Council to preside over this important meeting, which has been organized by the United Kingdom presidency. I also thank the Secretary-General for his clear statement today and for his report on the rule of law and transitional justice in conflict and post-conflict societies.

The need for justice and the rule of law is self-evident, particularly in conflict societies. Those principles are critical for the realization of social and economic justice and for the implementation of political, economic, cultural, religious and environmental rights. They are an essential means for the realizations of human aspirations for peace, equality and justice.

I have a few comments on the subject.

First, each conflict situation is unique and has its own dynamics. We agree with the Secretary-General that pre-packaged solutions are ill-advised and that we must eschew one-size-fits-all formulas. Secondly, we support the recommendation that needs related to justice and rule of law should be integrated into any international or United Nations involvement in post-conflict societies. Thirdly, we recognize the importance of building national capacities in independent national institutions. Fourthly, we support the promotion of good governance and national institution-building, particularly national judicial capacity-building.

Fifthly, we believe that use can be made of indigenous and informal traditions for the administration of justice and settlement of disputes, if they are consistent with international laws. Sixthly, we fully support the need for ending impunity for crimes against humanity. Seventh, justice, peace and democracy are mutually re-enforcing and should be simultaneously promoted. Eighth, reconstruction, economic revival and employment generation also create a wider stake in the preservation of the rule of law.

Ninth, the need for ending impunity for financial crimes is also important. The international community should strengthen and improve cooperative mechanisms to ensure that looted money or other assets acquired through corruption and other unlawful means are returned to the countries of origin.

Justice and the rule of law is vital for the establishment and maintenance of order, peace and stability, both at the intra-State and inter-State levels. The international community today could also be regarded as a conflict society. Thus, national rule of law strategies must be complemented by the international rule of law.

The Secretary-General made a powerful statement in opening the general debate of the General Assembly this year. I would like to quote three sentences from his statement at the Assembly's 3rd meeting

> "The rule of law is at risk around the world ... Every nation that proclaims the rule of law at home must respect it abroad; and every nation that insists on it abroad, must enforce it at home. ...
>
> Those who seek to bestow legitimacy must themselves embody it; and those who invoke international law must themselves submit to it."

The United Nations must build its capacity to uphold the rule of law, both at the national and — even more importantly — the international level. The international judicial system should be strengthened to promote adherence to the principles of the United Nations Charter and international law. The international judicial bodies which have been established so far are, we believe, a good start. But we should seek to promote and further the international judicial systems, in the context of the measures being considered, to create a United Nations system responsive to the realities of the twenty-first century.

Mr. Yáñez-Barnuevo (Spain) *(spoke in Spanish)*: First I would like to note the skill of the Council's presidency this month — the United Kingdom — on proposing for the theme of this debate, for the second consecutive year, the rule of law and transitional justice in conflict and post-conflict societies.

In the context of the report of the Secretary-General (S/2004/616), which we have examined closely, my delegation would like to highlight a number of points that we regard as particularly important. I would like first to congratulate the Secretary-General and to thank him, not just for his introductory statement this morning, but also for his important address at the start of the General Assembly session this year (see A/59/PV.3), which placed consideration of and action on law and human rights, both within and among countries, at the very centre of the debate on the direction the Organization should take.

Before I move on to the specific points that I would like to make in this regard, I would like to note that Spain fully endorses the statement to be made later by the representative of the Netherlands on behalf of the European Union.

Creating security and trust among populations in crisis and in post-conflict situations is indispensable if we are to consolidate or restore — depending on the situation — the rule of law and the justice system. Legal certainty provides a foundation for ensuring stability — with regard not only to the political system and the citizenry, but also to economic and social issues. The United Nations has broad experience, acquired in the field, in peacekeeping operations. It

also has a wealth of contributions from the deliberative bodies of the Organization, in particular the General Assembly, which as long ago as 1985 adopted the Basic Principles on the Independence of the Judiciary and, subsequently, the Basic Principles on the Role of Lawyers and the Guidelines on the Role of Prosecutors. Nor should we overlook the important contributions made by the Commission on Human Rights or the advice provided in this respect by the Office of the United Nations High Commissioner for Human Rights.

First and foremost, we must keep in mind that local actors and local institutions are key in this respect. We must minimize the risk of United Nations actions in this area sometimes being perceived as constituting external interference or as disregarding circumstances and traditions peculiar to the country in question. We therefore fully support the Secretary-General's statement that, in its actions, the United Nations must not try to direct, but to assist and provide guidance to, fragmented societies that require outside assistance for the restoration of conditions in which their own institutions can function properly.

Furthermore, it is essential to ensure that justice not be just an abstract idea, but a tangible reality for citizens, especially victims. In that regard, we believe that the initiatives put forward by the Presidents of the International Criminal Tribunal for Rwanda and of the International Tribunal for the Former Yugoslavia with a view to establishing mechanisms to provide reparations for victims should be studied carefully and in a positive manner. The Victims Trust Fund, set up by the States parties to the Statute of the International Criminal Court, is already beginning to operate.

We also look forward to the completion of the work begun by the Commission on Human Rights aimed at formulating basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and international humanitarian law.

The report of the Secretary-General also refers to the problems resulting from rule of law vacuums — when peace operations take place in environments marked by the effective absence of working criminal justice systems.

The Brahimi report on peace operations (S/2000/809) raised the possibility of developing a type of legal code that could provisionally be applied in situations such as I have just described, with a view to filling such vacuums. We are gratified to note that, over the next few months, the preparation of instruments that could facilitate the work of the United Nations in this regard is expected to reach completion.

In the area of international justice, given the experience of special and mixed criminal tribunals, the International Criminal Court has a key role in combating impunity for the most serious crimes of far-reaching international importance. The international community now has at its disposal a permanent, independent and impartial instrument to ensure justice in the most significant cases of serious violations of human rights and international humanitarian law when, in keeping with the principle of complementarity, national penal systems are not in a position, for one reason or another, to address such important issues in a genuine and effective manner.

We welcome the fact that, in recent days, a number of countries have ratified the Rome Statute, and that consequently more than half of the States Members of the United Nations are now parties to the Statute. We also welcome the fact that the Secretary-General and the President of the International Criminal Court have signed an agreement on cooperation and consultation, with the result that the Court is now part of the United Nations system.

During the past few years we have sometimes seen positive results from the application of complementary measures, which can help to ensure justice in specific transitional situations. That is something to which Mr. Méndez also referred in his opening statement. I have in mind truth and reconciliation commissions, commissions aimed at establishing a historical record, national commissions on human rights, commissions to investigate the records of administrations, and so forth. Such mechanisms may be particularly appropriate in a political and social context by emphasizing the national character of the process of restoring justice and the rule of law.

It may sometimes be possible to set up specialized tribunals or courts. At other times, the proper functioning and strengthening of national capacities in the administration of justice might make such specialized tribunals or courts unnecessary. The particular formula will depend on the circumstances,

and the will of the peoples most directly affected will always be decisive.

The training of local personnel in the area of justice and the rule of law is a key element — one that must be worked on at all levels. To that end, appropriate resources must be mobilized. In this regard, in coordination with the European Commission, Spain recently held a workshop on criminal justice with the assistance of experts from various international organizations, including the United Nations and associations and organizations of civil society. That workshop was designed precisely to enhance existing capacities in this area — particularly in connection with crises in post-conflict situations. In this regard, we must not overlook the potential contributions of organizations like the Council of Europe, with its unparalleled experience in the protection of human rights, judicial cooperation in civil and criminal matters and the modernization of justice systems. Then, there is the Organization for Security and Cooperation in Europe, which has been doing effective work in preventive diplomacy and crisis management.

In conclusion, let me state that my delegation fully supports the conclusions and recommendations contained in the report of the Secretary-General, particularly in the last chapter, entitled "Moving forward". I would also like to make the point that Spain is ready to cooperate actively in the implementation of those recommendations. Because of the far-reaching importance of the subject under discussion, it would be desirable for the Security Council to review periodically the progress made in implementing those recommendations, so as not to lose the momentum which the United Kingdom initiative has generated.

Mr. Maquieira (Chile) (*spoke in Spanish*): I would like first to express our gratitude to the United Kingdom for convening this public debate during its presidency. Our thanks also go to the Secretary-General for the report that has been introduced. We wish to express our appreciation to Mr. Juan Méndez, the Special Adviser to the Secretary-General, for his significant contribution. He is a distinguished Latin American who is well known to us for his unswerving devotion to human rights.

My delegation, Sir, sees this exercise as a part of process in which the Security Council discusses the post-conflict role of the United Nations in key areas so as to ensure sustainable peace and decision-making, especially in terms of designing mandates and exit strategies. In this regard, the notion of the rule of law is a fairly recent paradigm in international relations. It is seen as a limit on the arbitrariness of the State and a principle for regulating relationships both internationally and within each society.

Reconciliation as such is seen as the collective response of a society emerging from crisis, whose social fabric has been damaged. It puts an end to the cycle of violence and lays the foundation for a new coexistence.

There can be no reconciliation without justice, and we will continue to repeat this whenever necessary.

Today's meeting follows two other recent open debates held in the Security Council. The first — on justice and the rule of law: the role of the United Nations — was organized by the delegation of the United Kingdom in September of last year. The second — on post-conflict national reconciliation and the role of the United Nations — was held in January under my country's presidency.

In response to specific mandates from the Security Council after those debates were held, the Secretary-General prepared the report on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616), the topic now before us. In my delegation's view, this is a very comprehensive report of great conceptual value, which very clearly describes the experience of the United Nations in promoting the rule of law and human rights in conflict and post-conflict societies, in addition to giving specific recommendations.

My country shares the view of the Secretary-General on the key role to be assigned to the rule of law and the need to continue to take an integrated approach in which transitional justice is also addressed. My delegation would like to point out that my country does have some recent experience in the area of transitional justice. We also applaud the emphasis on the establishment of effective national judicial systems, the observance of international human rights norms, and the need to support the International Criminal Court.

As regards reconciliation, it seems to us that the report may have used too restrictive an approach. The

report regards reconciliation as an extrajudicial means of transitional justice. It seems to us that this viewpoint, based on an instrumental interpretation of reconciliation, does not reflect the fact that reconciliation is a process. However, it is also an end-result, which at times may take the form of specific mechanisms whose real-world application may lead to changes in interpersonal relations within a society.

Perhaps the report has failed to address reconciliation from the perspective of the political response that States, the United Nations and the Security Council must provide in the post-conflict reconstruction process, which goes beyond the merely legal ambit.

Apart from a few specific points, we believe that the report is positive and we endorse its recommendations. We believe that, in the current circumstances, we should focus on determining which practical recommendations we should adopt in order to give form to those ideas within the United Nations.

On this point, I would like to briefly refer to two of the recommendations. We welcome the report's emphasis on gender issues and promoting the full participation of women in the whole process. This dovetails with what the Security Council adopted in resolution 1325 (2000), to which I will return shortly. Then, there is the question of strengthening the capabilities of the special representatives of the Secretary-General and of peace operations, so that there can be information-gathering right from the outset of a conflict, which will then provide evidence of serious violations and offences. This would mean not waiting for the end of a conflict or the beginning of the post-conflict stage to carry out this process. On many occasions we have witnessed post-conflict situations in which issues of human rights and justice have arisen, but where much evidence, which initially appeared in the form of mere information, has been destroyed. Perhaps, with provision for the necessary legal safeguards, the Council should look at how those mechanisms — the special representative and peacekeeping operations — could be used to gather information, which could then serve as evidence. This has nothing to do with the subsequent decision as to whether or not persons identified as allegedly responsible should be tried.

We trust that the ideas emerging from this debate will help to give practical form to the role of the United Nations in the area of the rule of law and transitional justice in post-conflict situations. This role should be one of facilitation and not a replacement for national institutions.

Mr. Sardenberg (Brazil): Mr. President, my delegation wishes to thank you for convening this open debate. We are also grateful to the Secretary-General for his thorough report on this increasingly important topic regarding justice and the rule of law, and for the concrete recommendations he has put forward. I should also like to thank the Chilean delegation for having organized an Arria-formula briefing together with representatives of non-governmental organizations who provided many valuable and insightful comments on the subject.

Last but not least, I should also like to thank Special Adviser Juan Méndez for his highly valuable participation in our meeting.

Brazil fully supports the Secretary-General's statement to the General Assembly on 21 September. It is indeed our major responsibility to instil, uphold and restore greater respect for the rule of law, not only at home but also throughout the world. In particular, all Member States have an unquestionable and overriding duty to abide by the United Nations Charter and, in the present case, by international human rights, humanitarian, refugee and criminal law. May I add that we took note with interest of the points raised by the Secretary-General in his report, and specifically when he comments that

> "We must learn... to eschew one-size-fits-all formulas and the importation of foreign models, and, instead, base our support on national assessments, national participation and national needs and aspirations". (S/2004/616, summary)

Much can be done by the United Nations in the domain of the rule of law. Mandates recently adopted by the Council include important rule of law and justice components in missions such as those in Côte d' Ivoire, Liberia and Haiti. In those multidimensional peacekeeping operations, the United Nations plays a major role in formulating and implementing long-term post-conflict initiatives, not only towards development and democracy but also in relation to the strengthening of the rule of law. All of those objectives are interdependent and mutually reinforcing, and contribute to build sustainable peace in war-torn societies.

Where an independent and impartial judiciary is functioning, justice tends to be pursued and done, rules are fairly applied and, as a result, people trust their legitimate institutions. In a post-conflict setting, the cycle of violence can be broken and the recurrence of conflicts can be effectively prevented.

Adherence to the rule of law entails the observance of the principles of equality before the law, separation of powers, democratic governance and social justice, among other fundamental precepts. The rule of law must be consistent with international human rights norms and standards. Respect for human rights is even more imperative in post-conflict scenarios, where the protection of persecuted minorities is urgently needed.

Helping shattered societies to re-establish the rule of law and address past abuses in order to achieve reconciliation involves a range of complexities. It is a critical task that in many settings requires the engagement of the international community.

On the subject of transitional justice in post-conflict societies, some key issues should be highlighted. We need carefully to consider the particular rule of law and justice needs in each country. Local consultation and ownership are very important elements, especially in that which concerns the victims themselves.

The dynamic is different in each experience and a distinct and calibrated combination of mechanisms will be required. For instance, it is necessary to make the relationship between courts and truth commissions conform to specific situations. Reparations programmes to victims of gross violations of human rights are also an essential element, as are vetting processes. At the same time that we take into account the rights and needs of victims, we must recognize and respect the rights of accused persons.

True reconciliation requires a delicate balance between the values of justice and peace. Together with democracy, those values are indeed mutually reinforcing imperatives, as mentioned in the report of the Secretary-General, and it is possible to promote all three in fragile post-conflict settings. To do so, the sensible timing and sequencing of the implementation of transitional justice processes need to be borne in mind.

Brazil has wholeheartedly supported the establishment of the International Criminal Court (ICC) as a permanent and independent tribunal to promote the rule of law and to ensure that the gravest and most heinous international crimes do not remain unpunished. Now that the ICC is starting its work and is becoming able to provide long-term and robust deterrence, the confidence we have placed in its effectiveness should be borne out. Ultimately, the full credibility of the Court is directly proportional to its universality. We therefore encourage all States that have not done so to accede to or ratify the Rome Statute at the earliest opportunity. Today, the ICC counts nearly 100 States parties.

We welcome the fact that the report rejects any endorsement of amnesty for genocide, war crimes or crimes against humanity, and ensures that the United Nations does not establish or directly participate in any tribunal for which capital punishment is included among possible sanctions.

We must give serious consideration to the Secretary-General's recommendations, such as setting up a roster of transitional justice experts and guaranteeing that they receive appropriate pre-deployment training. But we can achieve tangible results only with the necessary financial resources and highly qualified personnel for a solid investment in justice and in the rule of law, which requires a viable and sustainable funding mechanism.

Brazil has always favoured a comprehensive approach that underscores the developmental nature of the rule of law in order to enhance the provision of support to countries for national capacity-building, a primary strategy in strengthening the rule of law.

On my delegation's initiative, on behalf of the Common Market of the South, and with 141 sponsors in total, the General Assembly adopted in 2002 resolution 57/221 on the strengthening of the rule of law. On that occasion, we all recognized the role played by the Office of the High Commissioner for Human Rights (OHCHR) in supporting national efforts to strengthen the institutions of the rule of law. We all expressed our deep concerns about the scarcity of means at the disposal of OHCHR for the fulfilment of its tasks. The United Nations system, in particular OHCHR, should be given more resources to work with countries to strengthen national human rights institutions and to provide assistance, inter alia, in

programmes related to the training of police, prosecutors, judges, lawyers and prison officers.

Mr. Motoc (Romania): Romania fully associates itself with the statement to be made shortly by Ambassador Van den Berg of the Netherlands on behalf of the European Union. I shall therefore confine myself to brief remarks of a complementary nature.

I wish at the outset to thank the United Kingdom for carrying forward this extremely important and timely initiative. Our commendation goes also to Secretary-General Kofi Annan for making the rule of law a priority topic for the proceedings of the fifty-ninth session of the General Assembly, as well as for his comprehensive and inspiring report, which offers a good platform for further discussions within and outside the Council.

Romania has an especially immediate understanding of the importance of justice and the rule of law in building a democratic society, as it is a country that dealt quite successfully — judging by the annual report delivered this very day by the European Commission — with the challenge of an accelerated political and economic transition. In all modesty, we stand ready to share with those interested the recipe, with all its strong points and its shortcomings and lessons learned. One important ingredient in that respect is how to handle the constantly evolving requirements of making the law actually rule the land.

Romania strongly supports the central role played by the United Nations, both as a promoter of the universal principles of justice and the rule of law and as an active participant in their concrete implementation. Embedding justice and rule of law components in the terms of reference for United Nations missions and assisting war-torn societies to put in place adequate reforms in that regard should become a permanent priority of the work of the United Nations.

Nevertheless, real progress in achieving effective, genuine justice and the rule of law depends largely upon local actors. Multilateral and bilateral assistance should be considered only as supporting elements in ensuring that justice and the rule of law are effectively widespread throughout the region or country concerned, thereby fostering solid prerequisites for sustainable local ownership. The fundamentals of justice and the rule of law have to be lived and practised locally.

Achieving national reconciliation has often proved to be one of the biggest challenges in efforts to ensure lasting peace in conflict-shattered societies. It therefore makes sense in such cases to capitalize on the virtues of the general concept of transitional justice, with due account being taken of cultural specifics and the traditions of the countries and societies concerned.

Atrocities and injustices brought about by civil wars and State repression can easily fuel new cycles of violence. Impunity may undermine trust in legal systems, thereby encouraging further crimes. While welcoming the important role played by ad hoc international criminal tribunals in helping countries and peoples to come to terms with past abuses, we believe that in many cases similar results could be achieved at lower costs if judicial mechanisms were established at the national level and strengthened with international support. As rightly pointed out in the report of the Secretary-General, easier interaction with local populations, closer proximity to evidence and witnesses and greater accessibility to, and for, victims, are indisputable advantages in that regard.

Of course, where States are unable or unwilling to prosecute and bring to justice those responsible for the most serious crimes, the complementary jurisdiction of the International Criminal Court (ICC), an institution that reflects universal aspirations to the rule of law and global justice, should be resorted to. I wish to take this opportunity to reiterate Romania's firm commitment to the goals and principles of the Rome Statute of the ICC, as well as to express our strong belief that the Court will live up to expectations and provide an effective means of bolstering the rule of law and dealing a decisive blow to the culture of impunity.

A wider range of non-judicial mechanisms such as truth commissions must of course supplement criminal justice and reparation programmes for victims. The latter aspect should be afforded greater consideration, as reparations programmes can contribute substantially to the promotion of national reconciliation. Quite often, the prejudice resulting from conflicts is not only confined to the level of those directly affected, but has more profound implications at the levels of community and society. We are indeed dealing with serious collective trauma when, for instance, conflicts inflict damage to, or destroy, cultural or religious patrimony, tearing apart the values that make up and hold together a given community. In

such cases individual compensation should be accompanied by broader restoration and reconstruction and programmes.

There is one additional concern that I would like to bring to the fore of this discussion at the United Nations regarding the importance of justice and the rule of law, in the hope that it will be possible to integrate it into the further pursuit of the theme proposed by the United Kingdom. We must not lose sight of a phenomenon that may sometimes be more worrisome than even the challenges of building or rebuilding a viable administration of justice in post-conflict situations. That phenomenon is the proliferation of areas in our world where there is a complete absence of law.

We have improved our capacity as an international community to address and manage even the most intricate and complicated conflict and post-conflict situations. But we do so in most cases when we have before us a conventional set of interlocutors to deal with. However, we do not seem to know what to do with regard to self-styled republics and territories where there is no recognized authority to be held accountable by world opinion. There are numerous such black holes today, and they exist, unfortuantely, in most areas of our planet. The reluctance, uneasiness or inability of the international community to tackle such problems casts a shadow over the valuable work done to avert more conflicts and tensions than ever before. Eventually, that makes our work incomplete and is a glaring example of unfinished business.

In closing, I would like to express Romania's full support for the conclusions and recommendations set out in the report of the Secretary-General, as well as our full readiness to contribute to their implementation. We would also like to commend you, Mr. President, for the draft presidential statement on this subject. We look forward to building upon it further during the Council's future deliberations.

Mr. Benmehidi (Algeria) (*spoke in French*): I would like to thank you, Mr. President, for your initiative to organize this public meeting on the matter of the re-establishment of the rule of law and the administration of transitional justice in societies in the midst of conflict, which is at the very heart of the work of the United Nations. I would also like to thank the Secretary-General for providing us with a report on the role of the United Nations in establishing justice and the rule of law in post-conflict societies and on national reconciliation.

Justice and the rule of law are very closely linked to the maintenance of international peace and security. The Security Council is therefore intimately involved in this matter, which is also associated with the prevention of conflict.

Experience has shown that United Nations peace operations — such as those in Timor-Leste, Haiti and Liberia, for example — can sometimes have direct responsibility for the administration of judicial services and police and penal systems, thereby helping to strengthen judicial institutions, train judges, ensure that courts function properly and provide advice to host-country institutions responsible for ensuring respect for the law. United Nations peacekeeping operations increasingly include a civilian component assigned to those matters. Given this historic development and the increasingly important role played by the United Nations in this area — often under difficult circumstances — the establishment of a legal framework for peacekeeping operations under Chapter VII seems to us to be necessary.

In addition, we share the Secretary-General's view that no institutional reform generally — and in particular that of an institution charged with guaranteeing the rule of law — that is carried out during a period of transition has any hope of lasting if it is imposed from the outside. The role of the United Nations and the international community is not to act as a substitute for local initiatives; rather, it is to provide them with the necessary support.

In that regard, organizing post-conflict elections must be strategically planned. Rushing into elections without proper political and security preparations can actually be detrimental to the rule of law by bringing back persons involved in the crisis to begin with or by encouraging sensibilities that do not actually reflect the real political situation in a given country, thereby further damaging the democratic process.

My delegation also believes that the ultimate goal of reconciliation is not always compatible with immediate justice, although we must always reaffirm our commitment to putting an end to impunity.

With regard to international criminal justice, keeping in mind that it is above all the responsibility of national judicial systems to determine responsibility

for crimes, we should emphasize the important role played by the international and mixed criminal tribunals that have come into existence in the last 10 years. The establishment of such institutions is a significant milestone. We note that, while the two ad hoc Tribunals for the former Yugoslavia and Rwanda were able to function thanks to their extremely high budgetary resources, the mixed Tribunals for Sierra Leone and Cambodia were financed exclusively by voluntary contributions, which in particular for the former has led to a financial crisis with a negative impact on its activities. We therefore have the problem of mobilizing sufficient resources.

In addition, the International Criminal Court must see its role strengthened, and the integrity of its Statutes should be preserved so as to advance the cause of justice and law and put an end to impunity.

My delegation, furthermore, supports the recommendations contained in the report of the Secretary-General on mandates approved by the Security Council and on measures to be taken within the United Nations system.

I would not wish to end without noting that re-establishing the rule of law means building the three pillars — peace, freedom and development — that are the goals of the United Nations.

Finally, my delegation feels there can be no re-establishment of the rule of law at the national level when there has been recently such dangerous drifting off course, undermining the most fundamental principles of law, including those relating to human rights and international humanitarian law.

The tragedy of the Palestinian people, with the complacent silence of the international community, is indicative of how precarious, if not absent, the rule of law is at the international level. It also shows a singularly selective approach to the notion of respect for human rights.

Mr. Danforth (United States): This subject, justice and the rule of law, is so quintessentially British that there is no wonder this month's presidency chose it as the subject for open debate.

In the United States, first-year law students study English common law, and American concepts of law, government and individual rights, not to mention our language, literature and basic values, derive from our British heritage. Some of these points might be disputed on the other side of the Atlantic, but over here, Sir, your offspring are eternally grateful.

Today I want to highlight one aspect of the rule of law, the importance of transparency. Transparency is a true engine of the rule of law and can promote a responsive and trusted judicial system in both stable societies and those scarred by conflict. For the rule of law to grow in a society, the people must know the law. The law must be transparent to all citizens. This means the judicial system, courts, police and prisons must be open and visible. Making the law available means educating the citizenry. It means the judges must reach and publish reasoned decisions and cases. Star Chambers are incompatible with the rule of law.

The law may seem to require special expertise to understand, and if the law is not accessible to the ordinary citizen, if the ordinary citizen cannot know and trust the law, then the rule of law will be far out of reach. Knowledge and openness are the best bulwarks against arbitrary decision-making, whether by courts or by Governments. The United Nations, in particular, should marshal its resources effectively to help societies emerging from conflict to develop their national judicial capacities in a manner that is accountable to their citizenry.

However, the rule of law cannot simply be imposed by international bodies. To make the rule of law effective, citizens must also know their own Government. They must understand how it works and how to influence it. While legal and judicial matters necessarily involve certain confidences and restraints on sharing of information, absolute secrecy can encourage corruption. Transparency is an engine to a modern economy and a participant in the global economy. Access to information technologies plays an important role in open and free societies, both to stimulate economic activity and to provide citizens with information to know and monitor their Government, including their judicial systems.

Therefore, in addressing the problems of countries that have been engulfed in conflict and are seeking to build stable, peaceful and prosperous societies, we should assist them to develop a judicial system based on transparency and openness.

The Secretary-General's report on the rule of law has some valuable insights and recommendations. It rightly stresses the imperative of respect for the rule of law in any democratic, peaceful and prosperous

society. It underlines the importance of fair criminal justice. It catalogues useful actions the United Nations Secretariat can take to make itself effective in promoting the rule of law and helping countries build the institutions necessary to have the rule of law.

The United States has long supported efforts to hold responsible perpetrators of atrocities such as genocide, crimes against humanity and war crimes. We supported efforts to create the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda and the Special Court for Sierra Leone when countries were not capable or willing to exercise national jurisdiction. In Iraq, we are supporting Iraqi-led efforts to create the Iraq special tribunal. In the Sudan, we have repeatedly urged greater action to stop the atrocities.

We note, of course, that the report expresses some views we do not share. The report does not properly respect national decisions about criminal justice, particularly sentences a particular society may deem appropriate.

As this Council and the wider membership of the United Nations know full well, the United States has fundamental objections to the International Criminal Court (ICC) created by the Rome Statute. Our problems with the ICC concern the rule of law. We believe the Court should not have jurisdiction over citizens of States that are not parties to the Rome Statute. We believe that the Rome Statute does not reflect due process of law as we understand it, because, among other things, it allows multiple jeopardy and does not provide for jury trials, as our Constitution requires.

We believe the ICC runs a high risk of politicization and is not accountable. And we believe the ICC clashes with the international system of the United Nations Charter. It should come as no surprise, therefore, that we do not endorse the report's embrace of the ICC. We can accept the draft presidential statement today, because it respects our inability to support the ICC and does not explicitly or implicitly endorse the ICC.

I commend the United Kingdom for its historic leadership on this subject it has brought to the Council for its attention.

Mr. Adechi (Benin) (*spoke in French*): Mr. President, I thank you for organizing this public debate on a very topical issue. Our Council dealt with this issue last year also. Today's meeting enables us to continue our reflections so as to constantly improve the work of the international community in providing assistance to post-conflict countries for the promotion of justice and the rule of law.

For these countries, it is not only a question of establishing functional national institutions; it is also a question of learning healthy practices so as to strengthen the very foundations of the State. Apart from these two aspects of the question, I would also like to comment on the relationship between the rule of law, justice and development and, in particular, on the potential impact of poverty and the wrong kind of development on the rule of law and vice versa. Establishing or restoring the rule of law is absolutely essential for post-conflict societies. In order to achieve that goal, measures must be taken to legitimize the exercise of institutionalized power and to ensure that it promotes the general interests of society as a whole. That presupposes a common social vision that reflects a national consensus, which, in turn, can result only from inclusive dialogue.

The establishment of democratic national institutions requires that qualified persons be found to lead them. Leader support for the democratic ideal and for its implementation is an important factor which the international community and the United Nations can help to consolidate by providing a suitable framework for the mobilization of international cooperation, in order to ensure that new institutions learn the good practices that they need to survive. The United Nations can thereby contribute to the emergence of a true, revitalized culture of democracy, which is the best way of ensuring the rule of law on a lasting basis.

The rule of law does not depend only on a State's leaders. It requires also the participation of all sectors of society. The administration of justice in post-conflict societies is crucial to restoration of the rule of law, because it means that rights can be claimed, compensation for damages can be paid, and human rights violations that occur in conflict periods can be punished. It therefore plays an key role in national integration.

Post-conflict societies can meet the crucial need to re-establish stability and to prevent another outbreak of fighting by creating conditions whereby their citizens can make their interests known and pursue

them peacefully and legally, a right guaranteed by a democratic State.

In that respect, the administration of justice through national structures is far preferable and less expensive. Resort to alternative judicial measures that are based on moral values is sometimes fully justified. However, we have to recognize that shortages in the area of human resources and of infrastructure — a situation that often faces post-conflict countries — means that it is not possible to ensure an adequate and credible justice system.

In every case, priority must be given, in the framework of international cooperation, to rebuilding national capacities in the area of the administration of justice and to considering alternative judicial methods that take account of the cultural environment of the country concerned.

Using international forums — for example, for very serious crimes that violate international law — is also fully justified. In that respect, we would stress the need for ad hoc tribunals to continue to help strengthen, where necessary, national capacity in the area of the administration of justice. I would also stress the need for such structures to have sufficient and predictable resources, so that the message being sent by the international community can be a truly consistent one.

Benin welcomes the entry into force of the Rome Statute establishing the International Criminal Court, which is an essential instrument in combating impunity.

In addition to the issues taken up in the report of the Secretary-General, special attention should be given to the dialectical correlation between the rule of law and economic and social development. While the rule of law and a functioning justice system are essential to ensuring the sustainable development of post-conflict countries, the rule of law, however, can seem to be an unattainable luxury for countries that are so poor that most of their people are just managing to survive one day at a time.

That is the reason for excessive deforestation and the other negative trends that can be seen in very poor countries. It is clearly impossible for justice and the rule of law to prevail in areas of extreme poverty, which has very serious consequences for the affected countries. That represents a real threat to international peace and security.

Let us consider the extent of the devastation in Haiti after the recent hurricanes and the implications for the item under consideration today. Those tragic events, and the reactions to them, make clear the importance of promoting economic and social rights as an integral part of the rule of law, not only in post-conflict countries but also in countries whose economy is clearly vulnerable.

Mr. De La Sablière (France) (*spoke in French*): The Secretary-General has promised to make the strengthening of the rule of law and justice in post-conflict societies a priority for this Organization. France fully supports that resolve and thanks the United Kingdom for having placed this key issue on the agenda of the Security Council.

Heeding the recommendation you made, Mr. President — with which I fully concur — that we limit the length of our statements, I shall confine myself to underscoring orally the main points of the statement that I have prepared. I will circulate it in written form to delegations so that they may consult it if they so wish.

The excellent report of the Secretary-General gives a useful account of the experience acquired and makes specific proposals for future progress. France supports the recommendations of the Secretary-General, in particular those addressed to the Council.

In our view, the Security Council has a special responsibility in the area of the restoration of justice and the rule of law in countries at war or which are striving to emerge from conflict with the assistance of the international community.

It seems to us that it is incumbent on the Council to take into account, right from the outset of peace processes or operations, the dimension of justice and the rule of law. We believe that it should also draw on the experience acquired by the international community as a whole in that regard; that it should fulfil its responsibilities, in particular in the area of combating impunity; and, finally, that it should bolster its preventive action.

I shall take up briefly each of these points.

First, we should build dimension of the rule of law into an overall approach to the restoration of

peace. That, indeed, is what the Security Council does — perhaps not yet as well as we would wish it to do, but it has begun to follow that course. I believe that the action undertaken in Haiti in that regard is a good example in that respect, because, right from the start — with the first Council resolution — respect for human rights, the combat against impunity and the need to restore the rule of law were affirmed as goals and fully integrated into measures to restore security.

However, we should have no illusions. The Organization's actions must be well thought out; they cannot be undertaken in haste. For example, as regards the elections, we believe that everything possible should be done to ensure that they take place in a climate of sufficient security and freedom. Indeed, their credibility is at stake.

Secondly, we need to benefit from the vast experience that has been acquired on the regional and national levels. In that regard, it should be noted that regional organizations have increasingly accumulated genuine expertise. In Europe, for example, the Organization for Security and Cooperation in Europe, the Council of Europe and, of course, the European Union — whose presidency will speak shortly — are often partners of the United Nations in restoring sustainable peace, as in Bosnia and Herzegovina or in Kosovo. We are in favour of the partnership between the United Nations and regional organizations being further strengthened in this area.

It also seems to us that the contribution that non-governmental organizations can make also needs to be taken into greater consideration and incorporated more systematically. There are many actors here — the United Nations and regional and non-governmental organizations — and the wide range of actors involved in promoting the rule of law and peace-building means that we must be careful to ensure the proper coordination of their efforts to avoid duplication and lack of clarity. We are in favour of further reflection as to ways to better dovetail United Nations activities with those of other international interveners: international financial institutions, regional and subregional organizations, as well as non-governmental organizations and the private sector.

Thirdly, my country feels that it is incumbent on the Security Council to fully carry out its responsibilities. We know that a society fractured by conflict is often incapable — unassisted — of ensuring the dispassionate exercise of justice. However, justice is vital for reconciliation. We must, therefore, assist in meeting that need.

It seems to us that as a start, the Organization should be ready to lend its support in building national legal authorities, provided, of course, that they are in conformity with international standards. In that regard, France concurs with the Secretary-General when he states that the United Nations could not participate in any judicial system that might demand the death penalty.

The so-called mixed tribunals, bringing together national and international judges, are a very useful approach in helping a society to put to rest a troubled past and in rendering proper reparation to the victims. The Human Rights Chamber of Bosnia and Herzegovina, established by the Dayton-Paris Peace Accords, for example, made a key contribution in the restoration of victims' rights and, in particular, their property. That example of a non-criminal court is worth examining because of the fact that displacements of populations during a conflict always give rise to intractable disputes.

France welcomes the ratification by the National Assembly of Cambodia of the agreement signed on 6 June 2003 between the Secretary-General of the United Nations and the Kingdom of Cambodia, with a view to bringing the historical Khmer Rouge leaders of Democratic Kampuchea to trial. We invite States, as Cambodia will do, to lend their support to establishing those special tribunals.

In certain situations when local resolve is insufficient, only a fully international tribunal can serve justice. In the past, the Council shouldered its responsibilities by creating the International Criminal Tribunals for the Former Yugoslavia and for Rwanda. Now it should refer to the International Criminal Court the most serious crimes, if they remain unpunished. That Court is the instrument par excellence of the primacy of law and justice. More than half of the United Nations Member States are parties to its Statute. It should become universal. That is our hope and that idea is inherent in its conception. We hope that the Court will also be a model in terms of access for victims and reparation, owing, among other things, to the United Nations Trust Fund for Victims of Gross and Flagrant Violations of Human Rights chaired by

Ms. Simone Veil. Cooperation between the Court and the United Nations should be exemplary.

Fourthly, we believe that we need to bolster preventive action and, in that regard, we would like to express our satisfaction at the appointment of the Special Adviser to the Secretary-General for the Prevention of Genocide. It is one of the Special Adviser's tasks to draw our attention to any situation that threatens to degenerate into massive atrocities. It is also incumbent on the United Nations High Commissioner for Human Rights to draw our attention to any gravely disquieting situation.

On the subject of prevention, I would like to say a few brief words on the question of Darfur. An international commission of inquiry on human rights violations is preparing to go to the region. We eagerly await its report and its recommendations on how to best combat the culture of impunity there. We greatly hope that the commission of inquiry can be established as soon as possible.

Here are the focuses that, in our view, the Council should concentrate on in order to contribute to the restoration of justice and the rule of law in post-conflict situations. The Secretariat should assist us in that task by implementing the recommendations made in the report of the Secretary-General without delay. I would add that the contribution of Germany, Finland and Jordan to the debate on the internal organization of the Secretariat is one we feel will be very useful.

It remains for us, the Member States, to fulfil our part of the mission, in particular by providing the United Nations with experts that can be rapidly mobilized, which the United Nations needs to be able to carry out its activities in the restoration of the rule of law and justice.

Mr. Zhang Yishan (China) (*spoke in Chinese*): First of all, Mr. President, I would like to say that we are glad to see you chairing today's meeting. I would also like to thank the Secretary-General for his statement and for his first report on this issue.

Many countries emerging from conflict today are faced with the heavy task of reconstruction, restoration of the rule of law and justice and the stabilization of public order. All of those issues are important in order to give people new hope for peace. There is a universally recognized need for international mechanisms that will be democratic, harmonious and consistent with the Charter of the United Nations and international law. That is our common aspiration and the general course that needs to be followed. In that regard, today's meeting is definitely opportune and timely and will help us to better focus on our objectives.

Now I would like to concentrate on the following observations.

First, the restoration of the rule of law and justice is both a prerequisite for the restoration of peace in conflict-ridden societies and also a basic safeguard for ensuring long-term peace. Without the rule of law there can be no genuine peace. Only political stability, the progress of the population as a whole, sustained economic growth and peaceful development will make it possible to ensure genuine peace and stability. Therefore, the rule of law and justice must not be built on fragile foundations. Experience has shown that promoting the rule of law and justice is not merely a legal matter, it is also closely bound up with political, economic and social issues.

Secondly, the origins of conflicts are not always the same, but they are often associated with poverty and backwardness in terms of development. The end of a conflict does not mean the advent of peace. Conflicts jeopardize the possibilities for capacity-building in these regions, which often face difficulties in terms of resources, technology and qualified personnel. The international community and, in particular, donors need to assist these regions and actively support them. At the same time, in granting assistance, we must ensure that there is full respect for local customs, cultural traditions and the local legal system. We need to respect the right of the local population to choose and to decide. The participation of external parties should be limited to guidance, rather than direction. Strengthening local capacities — and not imposing pre-designed solutions — should be stressed.

Thirdly, coordination must be enhanced within the United Nations system, in order to draw on each other's expertise, to provide the right level of judicial assistance and to enhance the capacities of judicial elements in peace operations. The Secretary-General has presented a number of recommendations in paragraph 65 of his report, in particular regarding the roster of experts. These are measures that should be put into effect as soon as possible.

Fourthly, restoring the rule of law is something that should serve the purpose of securing lasting peace and security and providing for economic and social development. It should also serve the fundamental long-term interests of the local population. In this process, all parties must respect the United Nations Charter and the universally recognized norms of international law with regard to the sovereignty and territorial integrity of the country in question, and refrain from interfering in internal disputes and differences.

By way of conclusion, I would like to quote the Secretary-General in his address to the General Assembly: "Those who seek to bestow legitimacy must themselves embody it; and those who invoke international law must themselves submit to it" (*A/59/PV.3*).

Mr. Gaspar Martins (Angola): Your presence here, as you preside over this session, Sir, proves the importance and relevance of the theme under consideration today by the Security Council. In fact, the issue of justice and the rule of law is at the core of the United Nations activities and focuses the objectives of the international community on building a world that is more just, equitable and peaceful.

We thank the Secretary-General for his important statement and welcome the participation this morning of his Special Adviser on the Prevention of Genocide.

The Secretary-General's report before us (S/2004/616) underlines the essential role played by justice and the rule of law in the maintenance of peace and in promoting development and long-term national reconciliation. We fully share the principled views expressed in the report that justice, peace and democracy are mutually reinforcing imperatives and that the international community should base its approach on the assessment of specific national needs and on national ownership of these processes.

The last decade witnessed a number of important landmarks with regard to transitional justice and the rule of law, particularly concerning its codification. The African countries, through their engagement in peacekeeping efforts and particularly through the entry into force of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and People's Rights, took a huge step forward in the fight against impunity on the continent, in applying international humanitarian law and in the promotion and respect of human rights. It is our hope that such efforts — along with additional components of the national healing processes such as truth and reconciliation commissions — will succeed in helping post-conflict societies to foster accountability, render justice to victims, discourage further crimes and contribute to the restoration of peace by promoting long-term reconciliation.

Despite the significant progress so far achieved, much remains to be done. It is our conviction that only the establishment of sustainable democratic societies will ensure the primacy of justice and the rule of law on the African continent.

As a country that recently emerged from a long period of conflict and war, we are deeply committed to justice and to the establishment of the rule of law as indispensable prerequisites for a sustained process of peace and national reconciliation. Our experience has confirmed that a piecemeal approach to the issues of the rule of law and transitional justice does not bring about satisfactory results. Strategies for the implementation of an effective rule of law must stem from the grassroots level. They must encompass popular participation and must be comprehensive in engaging all of the relevant social, cultural, economic and judicial institutions.

Our experience has also confirmed that the financing of reconstruction and peace-building processes, including the creation of national capacities, new security and judicial structures, as well as renovated law enforcement capacities, constitutes a critical threshold in long-term national reconciliation and development processes.

In order to address the issues of justice and the rule of law in a comprehensive and coordinated manner, a long-term commitment by the international community is essential, since it is a shared responsibility to ensure justice for crimes under international law, which are, after all, crimes against the international community as a whole. While aware that the proposition is not to build international substitutes for national judicial capacities, we see international cooperation as a fundamental prerequisite for the effectiveness of justice and the rule of law and for the consolidation of peace and long-term national reconciliation.

To conclude, we again welcome the Secretary-General's report. We endorse his recommendations

defining the way forward, contained in paragraphs 64 and 65. We stress the importance of the creation of a roster of justice and transitional justice experts, and we fully support the call by the Secretary-General regarding the need to ensure a viable and sustainable funding mechanism to provide adequate resources for restoring the rule of law and establishing transitional justice, supplemented by appropriate multilateral and bilateral funding approaches.

The President: I will now make a statement in my capacity as representative of the United Kingdom.

The United Kingdom associates itself with the statement to be made later by the Netherlands on behalf of the European Union.

I wish to echo the welcome given by other speakers to the report of the Secretary-General (S/2004/616). I certainly hope that we can use its recommendations to give momentum to our efforts to improve the international contribution to building justice and the rule of law. I believe the report reflects a concerted effort within the Secretariat to bring together a broad spectrum of expertise to produce, for the first time, a single, coherent strategy on justice and the rule of law. That analysis, I think, is excellent. But, more important, the recommendations are practical and achievable.

We, as Security Council members, should be actively looking for appropriate opportunities to take forward the recommendations which apply to the Council. In particular, I believe we need to give due attention to the restoration of and respect for the rule of law in the support we give to peace agreements and in the mandate for peace support operations. There is already much work being done in that area, and we welcome the initiatives already under way, some of which have been described today by other speakers, for example the ideas from Germany, Canada and Sweden on spreading the norms and standards of international law. But we hope that the Secretariat can focus on bringing these together into a complementary and cohesive effort.

The Secretary-General's report (S/2004/616) rightly focuses on the establishment of transitional justice — that is to say, a framework for a society that needs to reconcile crimes from the recent past as well as to build an enduring framework for the future. That, I think, is one of the most important challenges we face.

Transitional justice is a necessary part of re-establishing normal social frameworks. The international tribunals have been an important learning curve in that context. We certainly hope that future initiatives will provide more effective, and less costly, means of accountability for crimes. And, of course, we share the Secretary-General's view that the International Criminal Court offers new hope for a permanent reduction in the phenomenon of impunity.

In contrast, the rule of law is part of looking forward and building a stable peace. That is an essential part of reconstructing post-conflict societies. But we should also recognize the value of upholding and strengthening law and order in preventing conflict and in wider peace support operations. That is a question not only for the Security Council, but for other parts of the United Nations system, regional organizations, individual donors and, of course, non-governmental organizations and civil society.

I would like to highlight two broad ways in which the United Nations can take forward the work on the rule of law.

The first way is to promote international standards. The United Nations is, critically, in a position to take an overview of what has worked and what has not worked in efforts to build the rule of law in various systems around the world. It can develop common standards in its own work and, indeed, spread best practice.

A specific rule-of-law element may not always be necessary in every United Nations peace support operation. But it would certainly encourage good practice to have in place a checklist of the main factors necessary to build effective judicial and legal frameworks to be taken into account in each case. The factors to be considered in United Nations missions could include, for example, providing advice on international norms and laws, building frameworks and regulations for legal institutions, opening accessible and fair channels of appeal and providing appropriate training and, critically, the important technical expertise.

The United Nations itself needs to uphold those standards too, not just in the programmes and missions it runs, but also in the management of operations and the actions of its staff. The responsibility to promote a fair, free and just society lies with everyone engaged in the process.

While the United Nations can take a lead in promoting international standards, the emphasis must be on building local frameworks, tools and mechanisms to support justice, law and order. An internationally imposed solution is not a durable one. Capacity needs to be built up through the communities and States that we aim to support. And that — capacity-building — is the second area on which I believe the United Nations needs to focus. Importantly, we need to strengthen civil society's capacity to uphold the rule of law and to protect individual and group access to a fair judicial system. The relevant United Nations bodies should consider how best to support civil society in that area through consensus-building, outreach and legal assistance.

I want to highlight in particular the role of women in that respect and to stress the importance of ensuring that action to restore human rights and the rule of law in post-conflict situations is undertaken in a gender-sensitive way. As the Secretary-General's report rightly notes, in a post-conflict situation, one of the major human rights abuses that the international community will have to face up to is likely to be gender- and sexual-based violence. That is an issue that the Council will also consider in the open debate we will hold on 28 October.

In that context, the United Kingdom was pleased to participate recently in a conference on gender justice held by the United Nations Development Fund for Women in conjunction with the International Legal Assistance Consortium. The conference produced a range of interesting recommendations for improved international action, which I hope all Member States will consider carefully.

Capacity-building needs to be worked into United Nations programmes at all stages. At the higher level, that requires, first and foremost, the political will to contribute resources and expertise. It also entails structures within the Secretariat and elsewhere which are capable both of carrying out planning and coordination within the United Nations and of building on the efforts of national donors, regional actors and non-governmental organizations.

In the field, we need to make sure that there is coherent and effective integration of justice and rule-of-law elements within United Nations missions. We also need to develop our understanding of when and how these can have the most impact. That means developing adequate technical expertise and monitoring mechanisms that can be implemented and compared across various missions.

In his report, the Secretary-General made several useful and practical recommendations which we would encourage the Secretariat to take forward rapidly. In particular, we would like to see implementation of the very practical "toolbox" ideas. These include the following.

The first idea is to convene technical-level workshops on the rule of law and on transitional justice experiences from around the world. We would suggest expanding that idea to ensure that we look at how supporting legal systems can also play a role in conflict prevention.

The second idea is to establish arrangements for creating and maintaining an up-to-date roster of experts. We might consider whether, in time, such a database could be developed into an interactive electronic forum where experts and stakeholders could discuss particular concepts or problems.

And the third, very important, idea is to organize staff training programmes on the rule of law and on transitional justice. We would envisage such training taking a very broad approach, encompassing, for example, judges and magistrates, judicial administration, civil police forces, legal aid workers and so on.

Many of today's speakers have highlighted other practical suggestions for taking this work forward. I believe that, together, we now need to work up policies which will provide real structures for societies that currently exist in a fragile framework of law and order or even exist in the absence of anything that could meaningfully be called justice. It is clearly important that we return to this subject to ensure that we are implementing the proposals on which we have, I believe, genuinely found broad consensus.

I would therefore propose that the Council might return to this subject in approximately six months' time to assess progress and, if necessary, to give renewed

impetus to this agenda. But, for now, I would strongly urge members of the Security Council and all those who are participating in today's debate to consider how they can contribute to taking forward these recommendations. I believe that we have a developing consensus and that we need to take this agenda forward.

I now resume my functions as President of the Security Council.

My game plan was to have all members of the Security Council make their statements by one o'clock, and I must say we have accomplished that goal with one minute to spare. Therefore, I intend, with the concurrence of members, to suspend the meeting until 3 p.m.

The meeting was suspended at 1 p.m.

United Nations S/PV.5052 (Resumption 1)

Security Council

Fifty-ninth year

Provisional

5052nd meeting

Wednesday, 6 October 2004, 3 p.m.
New York

President:	Mr. Rammell	(United Kingdom)
Members:	Algeria	Mr. Katti
	Angola	Mr. Constantino
	Benin	Mr. Adechi
	Brazil	Mr. Sardenberg
	Chile	Mr. Llanos
	China	Ms. Jiang Ning
	France	Mrs. Collet
	Germany	Mr. Much
	Pakistan	Mr. Mahmood
	Philippines	Mr. Lacanilao
	Romania	Mr. Filip
	Russian Federation	Mr. Lobach
	Spain	Mr. Romeu
	United States of America	Mr. Rostow

Agenda

Justice and the rule of law: the United Nations role

Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616)

This record contains the text of speeches delivered in English and of the interpretation of speeches delivered in the other languages. The final text will be printed in the *Official Records of the Security Council*. Corrections should be submitted to the original languages only. They should be incorporated in a copy of the record and sent under the signature of a member of the delegation concerned to the Chief of the Verbatim Reporting Service, room C-154A.

04-53883 (E)

The meeting was resumed at 3.10 p.m.

The President: In accordance with the understanding reached in the Council's prior consultations, I shall take it that the Security Council agrees to extend an invitation under rule 39 of its provisional rules of procedure to Mr. Mark Malloch Brown, Administrator of the United Nations Development Programme.

It is so decided.

I invite Mr. Malloch Brown to take a seat at the Council table.

The Council will now hear a briefing by Mr. Malloch Brown, to whom I give the floor.

Mr. Malloch Brown: For the United Nations Development Programme (UNDP), the rule of law has moved centre stage, particularly, of course, for the countries that we are discussing today — those in crisis and in post-conflict situations. The rule of law is, after all, the indispensable platform for development. People and economies need rules if the sustained interactions that build societies are to take place.

But, if I may say so, the rule of law is too important to be left to lawyers. The rule of law must be rooted in the social and political context of a nation. It is an expression of the fundamental social contract arrived at when peace replaces war and people find the terms on which they can live together: minorities with majorities; losers with winners; women with men. Legitimacy, availability and accessibility govern the success of new laws in a post-conflict society. Do the laws meet the test of being adequately home-grown, or has somebody else's legal system been imported wholesale? Is there a court system able to restrain over-zealous police and military? Is there one that offers affordable, rapid redress to the emerging new small businessmen and women to encourage them to enter the formal economy by protecting their property rights, and indeed, giving them the very right to do honest business when warlords, crime and corruption are still rampant?

UNDP has been working on these issues throughout the world. Drawing on a very thorough recent review of our work in post-conflict and transitional countries — the conclusions of which have helped to form and shape the collective thinking of the United Nations as outlined in the Secretary-General's report — I would like to reiterate some of the key distilled lessons from our perspective.

Our starting point, as the Secretary-General made clear this morning, is that too often international assistance on the rule of law has ignored the link between the rule of law and politics. Assistance is often technocratic and apolitical in nature, focusing on the transfer of technical know-how to State institutions and on the technical modernization of institutions such as the courts and the police. In the first post-conflict stages, a policeman or policewoman in a neighbourhood often matters much more than a computer at the police station, but given violence and training issues, the first — the bobby on the beat — may be much harder to pull off.

Too often, rule-of-law assistance neglects the need to build consensus among national stakeholders on the type of reform needed. As a result, rule-of-law reforms, which we — I think, like everybody else here — consider to include the police and prison systems, can lack the necessary legitimacy to be truly effective in providing the platform for sustainable peace and development. Events in Haiti are one example of this. There, the failure was larger than a failure of laws, but the lack of local legitimacy in the new rule-of-law system, particularly with regard to the police, was one element in a broader crisis of institutions.

For that reason, we have found that international assistance needs to aim at building indigenous support for reform. Reform efforts rarely incorporate public participation in the design and implementation of projects. Crucially, most projects are implemented in consultation only with Governments, to the exclusion of civil society. Experience demonstrates that future United Nations assistance needs a component for public debate and must rely more on project proposals by local actors. The United Nations has an important role to play in facilitating negotiations among national stakeholders in order to build that political will for rule-of-law reform. The emphasis that the Secretary-General put on this point is very welcome.

All this work needs to take place in the context of a comprehensive approach. The rule of law is a system of interrelated institutions which cannot be considered separately: actions in any one impact on them all. However, we have found that rule-of-law assistance is often piecemeal and does not acknowledge these

linkages. For example, assistance to El Salvador, Guatemala and Haiti in many ways viewed the public security sector separately from the judicial and correctional sectors. It is the failure to develop complementary reforms across sectors and institutions that has often resulted in conflict and lack of clarity on the roles of different institutions.

Despite that, however, cooperation among donors is too often the exception rather than the rule, resulting in a failure to accumulate information and lessons learned. For example, in Guatemala, a country of 10 million people and 419 judges, by 1996 there had already been more than 50 reports on various aspects of its judicial system, financed by 22 donors. In addition, donors have often engaged in overlapping or contradictory projects. In Nicaragua, more than 11 donors are involved in rule-of-law reform, often in overlapping projects. Given this predicament, it is vital that donors coordinate and accept direction from the recipient country when they evaluate a country's needs, develop a framework of assistance and implement the projects.

Less elevated, but at least as important practically, is the need for early, transparent commercial laws to be put in place. That brings business out of the informal sector and, by protecting property rights and transactions, allows a market economy to take shape and provides business owners with an environment in which they can develop and provide the growth, jobs and prosperity that are a vital emollient for the scars of conflict.

Clearly, throughout such efforts — again as the Secretary-General said this morning — issues of truth and reconciliation often risk overshadowing early justice development. But we do need to be cautious. There is a time and place for the matter of truth and reconciliation: too early retributive justice can undermine a fragile peace and the even more fragile trust between the former enemies on which it rests. Yet truth and justice postponed means hidden graves deep in the minds of men and women — at least for the families of victims. And that can prevent a society from turning the page to a new era of peace.

More broadly, I would just like to add that we are working with the Secretariat to support electoral processes. I recognize that that is on the edge of the rule of law, but it is critically linked. This year alone, UNDP will have supported elections in 19 countries, including two weeks ago in Indonesia and this week in Afghanistan. Elections matter. They are the road from post-conflict to longer-term legitimacy and social consensus. Yet we have learned that if elections are premature and not placed within the process of building the rule of law, the electoral process is undermined. Then, rather than aiding the reconstruction and recovery process, weak State institutions can radicalize political discourse and exacerbate the difficult task of reaching agreements, building coalitions among national stakeholders and protecting minority rights.

Finally, I hope that within the United Nations system we are making good progress in pooling our expertise and resources to support the various rule-of-law aspects of peace operations. In Afghanistan, Iraq and Haiti, UNDP made available some of its own expert staff to advise the Special Representative of the Secretary-General on such rule-of-law issues. That has led to joint assessments, joint programming and joint resource mobilization, culminating in enhanced cooperation in the United Nations system to support national capacity-building for the rule of law.

Critical to the work and continued relevance of the United Nations in this area are the working partnerships between the Department of Political Affairs, the Department of Peacekeeping Operations, the Office of Legal Affairs, the Office of the High Commissioner for Human Rights, UNDP and others.

Recognizing the interdependence between the rule of law and development, and the social, political and economic context within which the rule of law must be rooted, it is clear that we owe it to the countries where we work and to ourselves to deliver the holistic approach to the rule of law that we preach to them.

The President: I thank Mr. Malloch Brown for his statement.

Moving forward, in order to optimize our time, I will not individually invite speakers to take seats at the Council table and then to resume their seats at the side of the Council Chamber. When a speaker is taking the floor, the Conference Officer will seat the next speaker on the list at the table.

I now give the floor to the representative of the Netherlands.

Mr. van den Berg (Netherlands): Mr. President, I would like to thank you for joining us here in New York and for presiding over this important thematic debate in the Security Council.

I have the honour to speak on behalf of the European Union. The candidate countries Bulgaria, Romania, Turkey and Croatia, the countries of the Stabilization and Association Process and potential candidates Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia and Serbia and Montenegro, and the European Free Trade Association countries Iceland and Norway, members of the European Economic Area, align themselves with this declaration.

There is no peace without justice, and there is no justice without the rule of law. As the Secretary-General himself put it before the General Assembly in his speech on 21 September, the rule of law is indeed at risk. The fundamental principles of the rule of law are flouted not only by individuals, armed groups and terrorists, but also by Member States themselves. The European Union thanks the Secretary-General for his excellent and timely report (S/2004/616) and welcomes the vital importance that the Council attaches to work on justice and the rule of law.

The European Union is committed to an international order based on the rule of law, with the United Nations at its core. At the international level, all countries need a framework of fair rules and the confidence that others will obey them. The maintenance and promotion of the rule of law is an ever-present imperative.

In conflict and post-conflict societies, there are additional challenges to the rule of law: at the very moment when the need for justice is greatest, the legal structures necessary to deliver such justice may well be absent, sometimes due to the conflict, at other times when existing structures may have lost much of their credibility.

The European Union welcomes the conclusions and recommendations set out in the report of the Secretary-General and expresses its support for the inclusion of justice and rule of law elements in resolutions and mandates. We urge all States to endorse the entire set of recommendations set out in the report. We also strongly urge the United Nations Secretariat to take forward the recommendations in the report. The European Union would also welcome expert meetings on specific parts of the report in order to specify the necessary actions in concrete situations and any initiatives of Member States in this regard. Some, such as Finland, Germany and Jordan, have put forward thoughts on the organizational consequences for the Secretariat. These are also worth studying.

The European Union would like to point to the measures set out in paragraph 65 of the report, which include strengthening the capacity of the Secretariat. Adequate resources need to be secured for relevant departments, in particular the Department of Peacekeeping Operations, so as to respond to the increased United Nations involvement in this area. The European Union urges other Member States and international organizations to contribute national expertise and materials. The rule of law has been identified as one of four main priority fields within civilian aspects of the common European Union Security and Defence Policy.

In line with the report of the Secretary-General, the European Union recognizes the need to incorporate gender justice and gender sensitivity in all efforts and activities related to justice and the rule of law, as well as the need to ensure full participation of women.

The European Union welcomes the fact that the Secretary-General has listed some norms and standards for international assistance. Peace agreements endorsed by the United Nations, and Security Council resolutions and mandates, should never promise amnesties for genocide, war crimes or crimes against humanity. Also, the United Nations should never establish or directly participate in a tribunal that can impose capital punishment.

The European Union realizes that when the international community is called to intervene in conflict and post-conflict societies, there is no one-size-fits-all formula. Our strategies should take into account national cultures and traditions, as well as local structures and capabilities. We should work towards "locally owned" sustainable post-conflict structures with well-functioning justice systems, through which future disputes can be peacefully settled.

The European Union emphasizes the important role that criminal justice has to play in a society's efforts to come to terms with past abuses. We also recognize the need to give greater attention to meeting the needs of victims — providing appropriate

reparations for harm suffered. The European Union supports the full range of transitional justice mechanisms, as well as international efforts to end impunity for the most serious international crimes.

The most significant of these efforts is beyond doubt the International Criminal Court (ICC), which is now fully operational. The great advantage of the ICC compared with its predecessors is that it is readily available when the need arises. The European Union strongly believes that the Court will be an effective tool of the international community to buttress the rule of law and combat impunity. As the Secretary-General pointed out in his report, the Security Council has a particular role to play in this regard, as it is empowered to refer situations to the Court, even in cases where countries are not States parties to the Statute of the Court. The European Union shares the conviction of the Secretary-General that all States Members of the United Nations that have not yet done so should ratify the Rome Statute at the earliest possible opportunity.

The European Union notes the report's balanced appraisal of the lessons to be learned from the experience of the ad hoc international criminal tribunals. All these lessons have convinced the European Union even more of the importance of the establishment of the permanent International Criminal Court.

The assessment of contributions to both ad hoc Tribunals are determined by all and are to be paid by all in full and on time. We have learned that some are in considerable arrears, up to tens of millions of dollars, thus stifling the ongoing work at the Tribunals. Also, the European Union would like to draw attention to the Special Court for Sierra Leone, as well as to the future establishment of the so-called Khmer Rouge tribunals. We support the idea of financing partially those United Nations-sponsored efforts to assess contributions to the extent possible.

The European Union would support a request by the Security Council to the Secretary-General to keep the Council informed on progress in taking forward the recommendations set out in the report, and supports the Council's intention to consider this matter again within six months.

The President: I now give the floor to the representative of Australia.

Mr. Dauth (Australia): Thank you, Mr. President, and welcome to New York. We want to thank the United Kingdom for convening this second open debate on justice and the rule of law, and we very much welcome the report of Secretary-General (S/2004/616), which will be a valuable tool in our collective efforts to achieve transitional justice and entrench the rule of law in States which have been torn apart by conflict.

As others have remarked, the report identifies valuable lessons learned, and articulates important recommendations for United Nations approaches to transitional justice and rule of law issues, which, as Mark Malloch Brown so wisely said, are too important to be left to lawyers. These issues include the need to assess existing capacity in a State emerging from conflict, the importance of developing comprehensive long-term approaches, the need to ensure that responses are tailored to the specific political, cultural and social characteristics of the State concerned, the importance of involving all domestic constituencies throughout the process, and the need to build national capacity.

Australia's long history of involvement in peacekeeping operations and other assistance missions confirms these lessons. Let me talk about some specific lessons learned by Australia in recent experience. These flesh out the sorts of general points which I thought Mark was making so eloquently in his helpful remarks.

The experience of the Australian-led Regional Assistance Mission to the Solomon Islands is particularly relevant for us and, I think, more generally. The reason for the request by the Government of the Solomon Islands for assistance was a fundamental breakdown in law and order in the very institutions of the State. It was only through restoring the rule of law that a durable peace could be achieved. In devising and implementing a regional response, Australia and Pacific Islands Forum partners worked closely with the people of the Solomon Islands to develop a comprehensive rule of law strategy. This included assessing the state of the Solomon Islands' justice system, providing assistance for the judiciary and to strengthen correctional services, and the deployment of 300 police from the region, who were authorized to use executive powers within the Solomon Islands to support the Royal Solomon Islands Police Force. The police were supported by a deployment of defence force personnel who assisted the deployment and

provided additional support for police personnel. This strategy has now paid rich dividends with the arrest of a large number of alleged criminals and, importantly, the removal and destruction of small arms. Law and order have now been re-established, and peace and security restored in the Solomon Islands.

The experience of Timor-Leste also indicates the importance of long-term strategies to develop the rule of law. Successive United Nations missions have played an important role in the establishment of the rule of law in Timor-Leste, of course. As the Secretary-General's report notes, activities at the community level to achieve transitional justice and reconciliation — including the work of the Commission for Reception, Truth and Reconciliation — hold important lessons for the United Nations in devising, implementing and supporting rule of law strategies in the future.

The Secretary-General's report notes that a major obstacle to effectively addressing rule of law issues from the outset of a peace operation has been the fact that police are often too slowly deployed; frequently have insufficient mandates or skills; or, indeed, are in too short a supply, I think we need to note. To address that critical gap, Australia has created the International Deployment Group, a body consisting of 500 police available to participate in peace, capacity-building and stability missions. These police will be drawn from Australian police services and will have specialized training to equip them for such missions. Many of them will have previous experience in peace operations — in the Solomon Islands and East Timor, for example. We urge other States to consider developing such mechanisms to ensure that trained civilian police are available to participate in peace operations.

The report also notes the importance of international institutions in supporting domestic efforts to deliver justice and entrench the rule of law. In that context, the establishment of the International Criminal Court was a highly significant development. The Court has an essential role to play in facilitating justice and accountability, particularly through the complementarity principle, which is a central feature, of course, of the Court's Statute.

As the Secretary-General's report notes, another recent approach to achieving transitional justice is the provision of international support for mixed institutions, such as in the case of Cambodia. Australia welcomes Cambodia's signature on 4 October of the agreement between Cambodia and the United Nations to establish an Extraordinary Chambers in Cambodia to try senior Khmer Rouge leaders. We remain committed to assisting this process and call on Cambodia and other States to join Australia in providing funding for the trials. That will enable justice to be done — justice for which the people of Cambodia have been waiting for far too long.

Let me, in closing, note the forthcoming review by the Executive Committee on Peace and Security on matching resources with peacekeeping operations to facilitate the establishment of the rule of law and transitional justice. Australia will continue to follow that process closely.

The President: I now give the floor to the representative of Jordan.

Mr. Al-Hussein (Jordan): We are grateful to you, Sir, for your spirited and able leadership on this vital issue, and we thank you most sincerely for having organized today's discussion, which affords us an opportunity to comment on the Secretary-General's report on the rule of law and transitional justice in conflict and post-conflict societies.

It is, from every angle, a very fine report — one that we welcome most warmly. It is thoughtful throughout and very well written. In particular, my delegation appreciates the repeated references the report makes to the pivotal importance of common sense — that those who plan for rule of law and transitional justice in conflict and post-conflict societies must be guided by those simple tenets of the obvious: listen to the local actors; know what is unique from what is not and therefore — drawing from our shared historical experiences — what is relevant to the circumstances in question from what is not; appreciate the broader picture when seizing on the details; and do all this before sequencing an approach, maintaining, always, a policy that is nimble and alive to changing conditions. We applaud that way of thinking and congratulate the Secretary-General on a very well produced, analytical report.

My delegation would very much like to offer three observations on the detail itself. The first relates to the refrain, found particularly in paragraphs 41 and 42 of the report, that the two ad hoc Tribunals are and have been expensive propositions — the insinuation being, perhaps, that they have become too expensive

and may not even worth it. Indeed, so often has that assertion of high cost been repeated in this Chamber in the context of the Tribunals that we can safely say it has now become almost a given to many Governments, as well as to the United Nations itself. But why?

In all honesty, my delegation is at a loss to know where this thinking comes from, and we believe that it needs to be thought through further. For a start, the International Criminal Tribunal for the Former Yugoslavia (ICTY) costs the United Nations membership, per year, close to $175 million, which, to my delegation's way of thinking, is a very reasonable amount. For $175 million is less than one twentieth of what the United Nations paid annually, during the war, to maintain its peacekeeping operation in the former Yugoslavia — less than one twentieth. Put another way, the ICTY would have to continue operating until 2014 for its budget over the span of 20 years to measure up to what this Organization spent in one year alone — 1994 — on the operations of the United Nations Protection Force. And were it not for the ICTY, we can all be certain that the Dayton Peace Agreement would not have held in the form it has done for the past nine years. And so, if the alternative to justice and accountability is a likely return to a condition of general warfare, with all its familiar consequences, can the amounts already spent on the ICTY be construed as too great?

Much is often made by those who question the cost of the seeming absence of any impact the ongoing work of the ICTY has on the situation on the ground. And yet, we would argue, it is simply not necessary for the peoples of the former Yugoslavia to know what exact cases are now before the Court, who the defendants are, who is litigating or who is judging; or to know the judgements and the sentences; or even to understand the jurisprudence for there to exist a state of continuing peace. What is important is that the majority of people are aware that the Tribunal exists and that it functions properly — that is, that those accused of bearing the greatest responsibility for the commission of the worst crimes are being prosecuted. And that is sufficient.

With the international community prepared to spend almost $1 trillion a year on weapons — that historic companion of war — how can we say that anything we have spent thus far on justice — the surest companion of peace — is too expensive? In short, we the international community clamour in an ad hoc manner for instant results when it comes to international criminal justice, and we insist that those results must be quantifiable, when the very systems of justice we seek to create aspire to much more than simply that. We suffer collectively from a very short memory. We tend to be thrifty when it comes to spending on law, and generous when it comes to spending on weapons.

Our second observation concerns the Secretary-General's conclusions and recommendations, which are found at the end of the report and with which we agree almost entirely. We would have liked to see, however, the inclusion, in the last portion of the report, of the Secretary-General's pertinent observations concerning the International Criminal Court and its significance, remarks found earlier in the report. With three more countries having acceded to the Rome Statute in recent days, bringing the total number of States parties to 97, the majority of Member States of the United Nations are now party to the Statute, and all of those were ratifications were concluded in only six years. That is by no means a small accomplishment.

Turning to the second portion of the recommendations, where they relate specifically to the United Nations system, we are pleased to join the delegation of Finland in attaching ourselves to the remarks made earlier by the Permanent Representative of Germany on what possible institutional changes could be considered by the Executive Committee on Peace and Security in the foreseeable future, as proposed in our joint non-paper. My delegation believes earnestly that if we wish ourselves and the United Nations a high measure of success in that area, it will ultimately only be attainable through the establishment of a dedicated rule-of-law department — a field-oriented legal and judicial service.

Finally, it is important that the Security Council is hosting this second thematic debate on justice and the rule of law and the role of the United Nations, for it not only compliments well the priorities established by the Secretary-General in his speech before the General Assembly two weeks ago but also because it will, we hope, set the tone in the times ahead for the Council's own approach to the rule of law, the recognition of the law's primacy and the law's centrality to the maintenance of international peace and security. In the same vein, my delegation looks forward to the Council's upcoming consideration of the advisory opinion rendered recently by the United Nations

highest judicial body, the International Court of Justice, in a matter known to everyone here that is also of substantial importance to my delegation. We hope that, when that time comes, the Council's actions will be consistent with its current reflections.

The President: I now give the floor to the representative of Finland.

Ms. Rasi (Finland): Finland fully associates itself with the statement made by the Netherlands on behalf of the European Union.

Finland played an active role in the process leading to the publication of the report of the Secretary-General on transitional justice and the rule of law in conflict and post-conflict societies, which is under discussion today. Together with the United Kingdom, other interested delegations and the International Center for Transitional Justice, Finland organized a series of seminars bringing together interested Member States, the Secretariat and civil society, thereby facilitating inclusive discussions on themes central to the report.

Finland views the report of the Secretary-General as an important milestone. It has given the United Nations a chance to consider the lessons learned in this area and, perhaps even more importantly, to reflect upon what should be done in the future. The report recognizes that the Organization has in recent years increased its focus on transitional justice and rule of law issues in its efforts to bring peace and stability to conflict-torn societies. There is an increased demand for United Nations action, which has been responded to, inter alia, by including rule of law and justice components in the recently established United Nations peace operations in Liberia, Côte d'Ivoire and Haiti.

In planning the United Nations response, it is important that the strategy be based on national needs and that local actors are fully engaged in the planning and implementation process. Any strategy should aim to strengthen the capacity of State institutions. After all, there is no long-term stability if national institutions are unable to take over when the international presence ceases. We view the rule of law and respect for human rights as essential to achieving long-term sustainability. Without the rule of law and respect for human rights there is a risk that a State could revert to conflict.

Dealing with atrocities against civilian populations — and especially against women, children, minorities and refugees — becomes a core issue in the process of establishing trust in the judicial system in States emerging from conflict. In that connection, Finland wishes to give its full support to the International Criminal Court (ICC) and to ad hoc tribunals. The International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda have played a significant role in ensuring accountability where national judicial systems have failed to do so. As for deterrence and prevention, the impact of the ICC may well be even more important. The ICC has the great advantage of being available when need arises. That means, among other things, that enhancing respect for the rule of law must not be left to the post-conflict phase, but should be addressed while a conflict is still raging.

At the same time, the ICC is an institution for exceptional situations only. The primary responsibility for bringing offenders of international crimes to justice continues to rest with States. The impact of the ICC will have to be measured also by its indirect effect in encouraging States to incorporate and apply the rules of the Statute in their national jurisdictions. One could speak of the role of the Court in mainstreaming accountability for the most serious crimes and in building local rule of law. That term also emphasizes the role of the ICC in setting standards for national jurisdictions, including a high level of due process rights for defendants.

Finland believes that the increase in the demand for the involvement of the United Nations in rule-of-law and transitional justice-related issues should be met by enhancing the capacity of the Organization. To that end, adequate resources should be created at United Nations Headquarters. We hope to see proposals from the Secretary-General on that matter in the near future. We especially hope to see the capacity of the Department of Peacekeeping Operations (DPKO) enhanced in this area, as we recognize that it is vital that the issues relating to the rule of law are addressed from the beginning of an operation. In DPKO, resources are perhaps most urgently needed in the Criminal Law and Judicial Advisory Unit, the currently two-person Unit responsible for the judicial and corrections components of a growing number of United Nations peace operations, as well as in the Civilian Police Division.

Meeting the growing challenges also requires effective cooperation within the entire United Nations system. Finland therefore strongly believes that rule-of-law and transitional justice issues warrant their own dedicated entity in the United Nations Secretariat. For that purpose, Finland has prepared a non-paper, together with Germany and Jordan, reflecting upon the possibilities for future institutional structures in the United Nations. The non-paper has just been presented to the Council by my German colleague, and it was circulated to all the Permanent Missions prior to this Security Council debate. Our sincere hope is that the ideas presented in the non-paper can provide a starting point for future Executive Committee on Peace and Security deliberations on enhancing arrangements by the United Nations system for supporting the rule of law and transitional justice.

The United Nations should strengthen partnership arrangements with regional organizations, individual Member States and civil society organizations, which often have valuable expertise and resources in this area.

Effective coordination among all those involved in the rule of law and transitional justice projects, including those of UNDP, in conflict areas could ensure complementarity of action and success in delivering positive results. More cooperation is also needed to provide the United Nations with competent staff to deploy to its operations.

Finland hopes the report of the Secretary-General will enable the United Nations to further develop its action in the area of rule of law and transitional justice. To that end, it is crucial that the various recommendations laid out in the report be effectively implemented. We want to emphasize that the report can lead to results only if matched by a commitment on the part of the United Nations and Member States to provide adequate resources and political support. In that respect, we were pleased to hear Secretary-General Kofi Annan affirm in his speech to the General Assembly on 21 September (see A/59/PV.3), and again today, that he would make strengthening the rule of law and transitional justice a priority for the rest of his term of office.

Finland wants to express its commitment to continue working towards strengthening the rule of law and transitional justice and calls on other interested Member States to join in this process.

The President: I now call on the representative of Austria.

Mr. Pfanzelter (Austria): Austria fully endorses the statement made earlier by Ambassador Dirk Jan van den Berg on behalf of the European Union.

I would like to elaborate very briefly on the following two points. First, in his excellent report (S/2004/616), the Secretary-General stressed that the most significant recent development in the international community's struggle to advance the cause of justice and the rule of law was the establishment of the International Criminal Court (ICC). In last year's debate, I expressed the confidence that the United Nations and the ICC would cooperate successfully to achieve their common goal of strengthening the rule of law and justice in international relations. We are very pleased to note that just a few days ago the Secretary-General and the President of the International Criminal Court signed the Relationship Agreement between the United Nations and the ICC. This is an important step forward in enhancing the cooperation between the two organizations. My delegation is convinced that close cooperation between the United Nations and the ICC will guarantee success in our common efforts to end impunity and to strengthen the rule of law.

Secondly, my Government warmly welcomes the Secretary-General's pledge to make the strengthening of the rule of law and transitional justice in conflict and post-conflict societies a priority for the remainder of his term. In this respect, and in view of the unique role and responsibility of the Security Council, the Austrian Foreign Minister announced the initiation of a discourse on the role and functions of the Security Council in strengthening an international system based on the rule of law. As a first step, Austria will convene a panel, on 4 November, on the question of "The Security Council as world legislator", during this year's International Law Week at the United Nations in New York. The panel, which is being organized in cooperation with New York University, is designed to enhance the dialogue between theory and practice on this important topic. We hope that this initiative will contribute to a stimulating and fruitful discussion.

The President: I offer my apologies; I have to depart. I would like to thank everybody for their cooperation in the handling of today's meeting. I intend

to hand over to Sir Emyr Jones Parry, our Permanent Representative.

I now give the floor to the representative of Uganda.

Mr. Butagira (Uganda): The rule of law should be viewed in the wider context of the economic and social setting. Allow me to congratulate the Secretary-General on his report (S/2004/616), which is excellent, especially on the issue of adequate funding for the reform of the justice system. Uganda fully endorses the recommendations in that report.

The United Nations, over the years, has endeavoured to put in place an institutional architecture to regulate the conduct of States, based on the rule of law, respect for human rights and the promotion of good governance: the prerequisites for conflict prevention. Thus, an array of conventions, such as the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the Statute of the International Criminal Court, and so forth, have been elaborated. Through numerous General Assembly and Security Council resolutions, the United Nations is at the centre of the globalized world and has done remarkably well in advancing world order and security, despite a few setbacks. The Charter of the United Nations remains a beacon of hope. All those instruments add up to a code of conduct in conflict and post-conflict situations, especially in dealing with the culture of impunity.

One of the subjects that fascinated me when I was studying law at Harvard Law School, was the subject of exemption clauses in the field of contracts. An array of ingenious devices was devised to circumvent the application of exemption clauses. Thus, exemption clauses were not looked upon favourably. In the field of the application of international law, there should be no exemption clauses. Both the mighty and the weak must be treated equally. In extremely rare cases, national interest may justify a departure from recognized norms, but such departure should be well grounded in law and should be the exception rather than the rule. In this way, the United Nations would gain credibility.

The rule of law should also mean that the United Nations does not stand idly by while some States, either through failed systems — that is, failed States — or through an inability to act, are unable to protect their citizens from being butchered or otherwise grossly abused. Indeed, the notion of sovereignty should imply the obligation on the part of the State to protect its citizens. Where this is lacking, the international community should intervene on humanitarian grounds. I, therefore, commend the report of the International Commission on Intervention and State Sovereignty co-chaired by Gareth Evans and Mohamed Sahnoun, which elaborated on this concept. Sovereignty should not be used as a cloak to cover gross human rights abuses by nations.

Attention should now be focused on defining the parameters of that right to intervene on humanitarian grounds so that it is firmly embedded in international law.

The causes of conflict should be addressed, poverty in particular. Justice and the rule of law mean that all nations, big and small, developed and developing, should benefit equally from the benefits of globalization. For developing countries, this implies, for instance, access to international markets for their products, with the elimination of trade barriers. Trade, not loans, should be at the centre of the international development agenda. This does not mean, however, that we should do away with loans. Loans and grants should supplement trade. The developed countries should live up to the promises they made at various international United Nations conferences, such as those set out in the Monterrey Consensus. Lastly, on this issue, debts for developing countries, both multilateral and bilateral, should be entirely written off in order to kick-start meaningful economic development.

Trials by tribunals set up by the United Nations are slow-moving. Not only are they costly: justice delayed is justice denied. The United Nations should delegate some of the cases to be tried by local courts with international observers.

The Charter of the United Nations places primary responsibility for maintaining peace and security on the shoulders of the Security Council. For practical reasons, in some instances that responsibility has been devolved to regional organizations. In that regard, the Economic Community of West African States (ECOWAS) and the nascent Peace and Security Council of the African Union have played an important role in maintaining peace and security on the African continent. However, that devolution should not mean abdication. We see the dangerous trend of a hands-off policy by the Security Council in peacekeeping

operations in Africa. That trend should be discouraged. Both the Security Council and regional organizations should work in partnership where appropriate.

Lastly, let me say a word about the right to self-defence, which is enshrined in the Charter. There was a time when this was not an issue, since aggressive attacks would take place on the territory of the State defending itself. The problem arises, however, when a State has to defend itself on the territory of the offending State. Surely a State has a right to nip attacks in the bud and for that purpose carry out a pre-emptive attack. The problem is, where should the line be drawn between acts of aggression and acts aimed at warding off immediate threats of attack? The international community should elaborate on this issue, since it has a direct bearing on conflict resolution.

The President: The next speaker is the representative of Switzerland, to whom I give the floor.

Mr. Maurer (Switzerland) (*spoke in French*): At the outset, I should like to thank the United Kingdom for having convened this open debate on justice and the rule of law and, in so doing, enabled us to have an exchange of views on a topic that Switzerland deems to be essential and of priority interest.

Switzerland thanks the Secretary-General for his report on the rule of law and transitional justice in conflict and post-conflict societies, dated 23 August 2004. The report addresses questions that are key to advancing the process of reflection and the efforts undertaken to allow our Organization to better contribute to the re-establishment of the rule of law and to the administration of an effective, impartial and professional justice in societies in conflict or post-conflict situations. That concept is just as crucial in the process of elaborating sustainable development policies. Let me just say that in both cases, we are speaking of the "rule of law" — not "rule by law".

The report recalls the crucial importance of respect for the international norms recognized by the Charter of the United Nations as well as in the context of human rights law, humanitarian law, international criminal law and refugee law. No lasting peace is possible without unconditional respect for those norms. Switzerland recalls, in that respect, that, according to article 1 common to the Geneva Conventions, all States have a duty to respect, and to ensure, respect for the fundamental standards of humanitarian law.

In his report, the Secretary-General rightly stresses the need to base efforts to promote justice and the rule of law on processes that take account of local realities, and to support them by making better use of existing competences and capacities in the countries concerned. However, strict respect for the rule of law by United Nations organs and Member States in all their activities and their interactions at the international level remains indispensable if the Organization is to maintain its credibility in the process of the promotion of the rule of law at the level of individual States.

I would like to highlight two particular aspects of the question of the rule of law: international criminal justice and the rule of law as an essential factor in the promotion of peace.

The ad hoc international criminal tribunals for the former Yugoslavia and for Rwanda have made a considerable contribution to re-establishing justice and combating impunity in the regions concerned. The tribunals have also played a historical role in the development of international criminal law. It is essential that they receive the means necessary to discharge their mandates, as was eloquently stated earlier by the Permanent Representative of Jordan.

Furthermore, Switzerland agrees with the Secretary-General's assessment that

> "the most significant recent development in the international community's long struggle to advance the cause of justice and rule of law was the establishment of the International Criminal Court". (*S/2004/616, para. 49*)

With the recent accessions to the Rome Statute, more than half the States Members of the United Nations are now States parties to the Statute. The Court embodies the hope for a definitive end to impunity. Nevertheless, as the Secretary-General stated in the course of his address to the General Assembly,

(*spoke in English*)

> "the rule of law starts at home" (*A/59/PV.3, p. 3*).

(*spoke in French*)

That consideration is underlined by the principle of complementarity incorporated into the Rome Statute.

In this context, we would like to call on those States that have not yet done so to ratify the Rome

Statute and fully to collaborate with the Court. Switzerland also invites the Security Council to assume its responsibilities and to exercise its particular competence as recognized by the Rome Statute, namely that of bringing before the International Criminal Court situations in countries that are not parties to the Statute.

The Secretary-General's report underlines the importance of the rule of law for the stabilization of post-conflict societies. It is thus necessary to clarify what the rule of law means in terms of concepts, policies and operations. Democratic legislative procedures; equality before the law and fairness in the application of the law; a humane penal system and a police force anchored in civil society — all these are elements of a transition process which deserve increased support. Furthermore, those elements must be given greater weight in the context of the efforts of the Security Council, the Economic and Social Council, the General Assembly, the Secretariat, and in particular the United Nations funds and programmes. In that context, we would note that the preliminary recommendations made in the report of the Secretary-General do not go as far as the text itself had led us to hope.

Switzerland calls on the Security Council and all Member States to ensure that adequate means are available to better meet the challenges posed by the promotion of justice and of the rule of law.

Finally, we should not lose sight of the fact that steps to promote the rule of law and transitional justice are less costly, and their results longer-lasting, than the consequences of conflict, insecurity and impunity. Switzerland plans actively to participate in the process of reflection undertaken with regard to these questions.

The President: The next speaker is the representative of South Africa, to whom I give the floor.

Mr. Maqungo (South Africa): The strengthening of, and adherence to, the rule of law has always been central to ensuring democracy in conflict and post-conflict societies. We are therefore pleased that the Secretary-General has presented a report, entitled "The rule of law and transitional justice in conflict and post-conflict societies", that captures the wealth of relevant expertise and experience within the United Nations system. We welcome this report because it provides valuable lessons which the Council can utilize in implementing its resolutions and mandates.

The exercise of the rule of law, especially in conflict and post-conflict societies, is critical in creating conditions for peace and security that allow for development to take hold. Quite often, in conflict and post-conflict areas, especially in Africa, our experience has been that poverty and underdevelopment contribute to non-adherence to the rule of law. Yet it is that same rule of law that, when applied to regulate the conduct of individuals with each other and with the State, creates conditions for sustainable development.

The Secretary-General states that

> "Peace and stability can only prevail if the population perceives that politically charged issues, such as ethnic discrimination, unequal distribution of wealth and social services, abuse of power, denial of the right to property or citizenship and territorial disputes between States, can be addressed in a legitimate and fair manner." (*S/2004/616, para. 4*)

The Secretary-General further states that,

> "In formulating recommendations for the Security Council, planning mission mandates and structures, and conceiving assistance programmes, it is imperative that both the Security Council and the United Nations system carefully consider the particular rule of law and justice needs in each host country" (*ibid., para. 14*).

The Secretary-General also makes the point that, "a piecemeal approach to the rule of law and transitional justice will not bring satisfactory results in a war-torn or atrocity-scarred nation" (*ibid., para. 23*). Our experience with our own peace process in South Africa led us to the same conclusion: that the rule of law and transitional justice must address the causes of the conflict and the effects the conflict had on the population.

In South Africa, the cause of the conflict was the oppressive policy of apartheid. We adopted a constitution that builds a non-racial society to resolve that cause of that conflict. Following democratic elections in 1994, we put in place, within that constitution, State institutions supporting constitutional democracy, such as a Public Protector, a Human Rights

Commission and a Gender Equality Commission. Furthermore, our Government promulgated legislation on affirmative action and passed policies on Black Economic Empowerment to ensure that the problem of unequal distribution of wealth was addressed.

We also had established the Truth and Reconciliation Commission as a process to promote national unity and reconciliation to heal the wounds inflicted by the oppressive apartheid policy on our society. That process offered an opportunity for victims to face their perpetrators and find closure and for the perpetrators to seek the forgiveness of their victims. The meetings of the Truth and Reconciliation Commission were held in public and broadcast on television so that the whole country could be part of the healing process. Only those who had told the whole truth were granted amnesty.

We have set up institutions for collective reparation, such as the Freedom Park, to promote programmes to remember those who died in pursuit of our democracy and we are also engaged in providing individual reparation measures. Reparations are the State's way of participating in the healing process and restoring some dignity to those who suffered under the apartheid policy.

We are the first to concede that our South African experience may not be applicable to other countries emerging from conflict and the lessons we have learned may not travel well. However, the point made in the Secretary-General's report is that adherence to the rule of law can contribute to lasting peace and security.

We wish to associate ourselves with the recommendations made by other delegations regarding the institutional changes necessary to enable the United Nations to better cope with its work to strengthen the rule of law and transitional justice. The importance of the rule of law and transitional justice cannot be overemphasized.

We are convinced that international criminal justice systems, such as the International Criminal Court and the international tribunals established by the United Nations, can contribute to establishing a lasting peace in the areas where they are utilized. We wish to encourage the Security Council to exercise its mandate to refer situations to the International Criminal Court when national assessment needs dictate such a referral. That will guarantee that the practice of the rule of law becomes the bedrock for strengthening democracy.

Finally, my delegation supports the overall conclusions and recommendations of the Secretary-General. We wish to underline the importance of considering the needs of each specific situation so as to avoid developing common strategies for each and every conflict or post-conflict situation. After all, there can be no one-size-fits-all solution for every problem.

The President: I now call on the representative of Liechtenstein.

Mr. Wenaweser (Liechtenstein): Mr. President, it is a pleasure to see you preside over this meeting and I thank you for your initiative in convening this important debate.

We welcome the report of the Secretary-General and the set of actionable recommendations contained in it. Even when limited to conflict and post-conflict societies, the topic of the rule of law and transitional justice is a very vast one, and we thus need a clear focus in our debates. We therefore think it might be useful if the next report — and we support a follow-up report to be submitted in six months' time — could give Member States some guidance as to what topics could be central to our next debate.

The rule of law is an indispensable element of sound domestic policies, often referred to as good governance, and thus of sustainable development worldwide. Liechtenstein attaches great importance to the rule of law and is willing to assist other States through capacity-building in areas where we have relevant expertise. Our authorities are currently discussing with the United Nations Development Programme office in Belgrade the modalities for hosting an international conference on strengthening international cooperation in combating financial crime. That event will offer an opportunity for judges, prosecutors and other officials to exchange their expertise and experiences in the area of best practices.

It is clear that the United Nations must play a central role in the promotion of the rule of law. We therefore support the relevant efforts undertaken in the Security Council and elsewhere and welcome the leadership exercised by the Secretary-General.

The rule of law at the domestic level, as we are debating it today, must be complemented at the international level through full and unconditional

respect for internationally recognized standards, and transparent and fair rules in international decision-making. Such respect for the rule of law is a prerequisite for credible international assistance efforts to foster the rule of law at the national level.

The concept of the rule of law as defined in paragraph 6 of the report before us makes it clear that the rule of law has both a formal and a substantive component. Governance must not only be in accordance with the law, but the law itself must be in conformity with international human rights standards. It is thus crucial that the United Nations, in assisting societies emerging from conflict, promote respect for those standards. The rejection of any endorsement of amnesty for genocide, war crimes or crimes against humanity is but one such standard. Helping countries to cope with their transitional justice needs is not a purely technical, juridical exercise, but a substantive political process. In providing such assistance, the United Nations must uphold fundamental standards, while at the same time working with the specifics of any given situation.

There are — and this debate has made this very clear — no standard solutions or models that can uniformly be applied to all conflict or post-conflict situations. One of the most important lessons from the past in our view must be the principle of ownership. The goal of international or internationally assisted efforts must always be to enable the country concerned to ensure respect for the rule of law on its own.

The International Criminal Court is an institution that can play an instrumental role in that respect. The principle of complementarity upon which it is based constitutes a strong incentive for States parties to strengthen their national judiciaries, a key component of the rule of law. Bringing the perpetrators of the worst crimes to justice is one key function of the Court. Another is to be a component of international efforts, led by the United Nations, to ensure effective and independent prosecutions and trials at the national level worldwide.

A continued and intensive working relationship between the United Nations and its specialized agencies and programmes on the one hand, and the Court on the other, is therefore a necessity. We are confident that the relationship agreement signed between the two institutions just two days ago will be the basis for a constructive and mutually beneficial working relationship. As stated in the report before us, the Security Council has a particular role to play with regard to the International Criminal Court. The referral of situations to the Court is a unique and potentially powerful tool for the Council in ensuring that the worst crimes do not go unpunished.

The lessons learned from the ad hoc tribunals established by this Council will show the way forward for the ICC, as well as for other forms of assistance to national criminal justice systems, such as hybrid tribunals or other mechanisms that might, in certain cases, be the preferred or, indeed, complementary solutions. Once again, national ownership and a long-term contribution to the administration of justice in the society concerned must be key goals. We continue to support the ad hoc tribunals in their efforts to finish their work by 2010.

The Secretary-General's report shows that the United Nations has for many years been very active in helping countries strengthen national justice systems. These efforts and the availability of relevant expertise need to be systematically enhanced. The Executive Committee on Peace and Security should look into these matters, as suggested in the report, and make proposals for a number of institutional arrangements, including the development of a comprehensive roster of experts. As the importance of these activities increases gradually, the work carried out by the relevant players should be better coordinated and more accessible to Member States. A coordinating body, such as a unit or focal point within the Secretariat, is therefore needed, and we strongly support relevant discussions on this topic. We particularly welcome the non-paper submitted and introduced this morning by Germany, also on behalf of Finland and Jordan.

The President: I now give the floor to the representative of Belarus.

Mr. Sychov (Belarus) (*spoke in Russian*): First of all, I wish to thank the delegation of the United Kingdom for organizing a discussion in the Security Council on "Justice and the rule of law: the United Nations role". We believe that the discussion of this item is important and timely. We would also like to express our gratitude to the Secretary-General for preparing a report for today's discussion. It is very important that, in that report, the importance of observing the international norms set forth in the United Nations Charter is emphasized.

The Security Council and the United Nations as a whole make a valuable contribution to the re-establishment of national legal systems in post-conflict societies, particularly in the field of transitional justice. The participation of the Security Council in the exercise of international justice with respect to persons who have committed crimes during conflicts substantially influenced the development of the system of international criminal tribunals and international humanitarian law.

At the same time, this participation has generated many critical observations by members of the international community. These critical observations mainly relate to the correlation between Council activities and national efforts to restore justice and achieve national reconciliation in post-conflict societies. The lessons learned through the functioning of the international tribunals for the former Yugoslavia and Rwanda confirm that transitional justice systems must be based to a greater extent on national foundations. The United Nations peacekeeping missions are also a key aspect of the Organization's involvement in establishing the rule of law and rebuilding a justice system in conflict and post-conflict societies. The Security Council should focus greater attention on the issue of the safety of the personnel engaged in those missions.

The Republic of Belarus understands the topic for consideration during today's open meeting to be much broader than simply "Justice and the rule of law in conflict and post-conflict societies". The Security Council plays a considerable role in strengthening the rule of law in international relations, mainly in the area of its primary responsibility, the maintenance of international peace and security. It is the principal United Nations organ legitimizing the use of force for resolving situations posing a threat to international peace and security and the application of other enforcement measures against States under Chapter VII of the Charter. Belarus does not accept any legal conceptual innovations aimed at sidestepping or limiting the power of the Security Council to authorize or limit the use of military force. There should be no double standards in such an important realm of international law as the law of international security.

New global challenges have appeared in the twenty-first century and the Security Council has had to respond to these new challenges. A number of important resolutions on suppressing terrorism and preventing non-State actors from acquiring weapons of mass destruction, in particular resolutions 1373 (2001) and 1540 (2004), have been adopted. These resolutions show that the Council has been going beyond mere political enforcement and has been making a genuine impact on setting up norms of international law. Belarus believes that the involvement of the Security Council in forming rules of international law can be justified only by exceptional and extraordinary circumstances that constitute a threat to international peace and security.

It is important for the Security Council to become a more democratic and representative organ of the United Nations and to ensure general consent of States with respect to its setting of norms. In this connection, we call upon the members of the Security Council to make a comprehensive examination of its decisions to define the compliance of those decisions with the provisions of universal treaties and other norms of international law. The practice of including in resolutions political elements that contradict existing international law challenges the idea of the supremacy of law.

We note in this connection the need for more constructive and comprehensive action on the criteria to be used for the imposition of sanctions by the Security Council, the General Assembly and the Economic and Social Council.

In conclusion, allow me to say that I support continuing the practice of holding open Security Council debates on the United Nations role in ensuring the rule of law and strengthening justice. In considering this issue, major emphasis should be placed on the issues of the rule of law in international relations and the role of the Security Council in securing this rule.

The President: I now give the floor to the Permanent Observer of Palestine.

Mr. Al-Kidwa (Palestine): The rule of law and transitional justice in conflict and post-conflict societies is a matter of great importance to Palestine. We are a society that has been trying to rebuild itself and its institutions, including in the justice sector, as if we were in a post-conflict situation. The international community provided us with assistance in this field, and some have even tried to hold us accountable to the standards of justice that would be applied to a post-conflict situation.

The problem, however, is that, in reality, we remain in the midst of a raging conflict in which the stronger party, the occupying Power, continues to colonize Palestinian land and commit illegal acts against the Palestinian people, seeking to ensure that we do not succeed in our post-conflict reconstruction and to create conditions intended to negate our national rights and even our national existence. For example, while the Palestinian Legislative Council has been trying to create a body of Palestinian laws to replace those that existed before, the occupying Power continues to enforce its military orders and even to invoke British emergency regulations in the occupied Palestinian territory, including East Jerusalem, while at the same time establishing a separate legal system for the illegal Israeli settlers.

The international community must draw some conclusions. It is imperative to ensure, at the very least, a clear basis for an end to the conflict before one delves into the tasks of post-conflict reconstruction. Ignoring the crux of the problem and shelving international law with regard to the conflict itself can only lead to failure.

Today's debate concerns a broader theme, and we welcome that, for there exists a simple reality: without justice one cannot have peace, and without law one cannot have justice. Further, in the absence of compliance with the law and "playing by the rules", it is chaos that will prevail, with outcomes that are difficult to fully predict. We welcome the intention of the Secretary-General to focus on the rule of law in the coming period. We also welcome the increasing significance that the International Criminal Court is acquiring within the international debate, and we strongly hope that more centrality is given to the International Court of Justice, as the principal judicial organ of the United Nations system.

If we are to succeed in building and institutionalizing a culture of law — especially in post-conflict situations — we must ensure that conflicts are resolved on the basis of law. In the case of Palestine, the law has been elusive. At best it has been sidelined, and at worst it has been transgressed in the most egregious manner. The rights of the Palestine refugees under international refugee law have been ignored, including their right to private property. The human rights of the Palestinian people under international human rights law have been systematically violated. The rights of Palestinian protected persons under international humanitarian law have been trampled. And even our rights under the Charter have been denied, including our erga omnes rights such as the right to self-determination.

It seems accurate to say that this is an unprecedented case. The United Nations, especially the Security Council, has failed in a historic way. It has failed to implement its own resolutions; it has failed for more than 37 years to prevent the insidious and active colonization of Palestinian land and constant attempts to change the status of Jerusalem, a city of international importance; and it has failed to be faithful to the purposes and principles of the Charter. In short, it has failed to uphold the law.

To be fair, this is not the failure of the membership as a whole. True, a few might have tried to appease the aggressor at the expense of the law; but, more significantly, one permanent member has consistently prevented the Council from taking serious actions, has provided the occupying Power with unjustified diplomatic protection and has actively tried to neutralize — and at times even to negate — the law. The consequences of that behaviour have been extremely detrimental, not only in terms of the rights of the Palestinian people, but also in terms of the international system and its authority and credibility. That pattern of behaviour has undermined the rule of law and has deepened cynicism regarding justice and the rule of law, alienating those who believe in it and discouraging reliance on it.

While that has been a disastrous factor in the case of Palestine — compounding and prolonging the conflict — we should not resign ourselves to accepting that that is the way it has to be. Indeed, it is our deep hope that that pattern — and not the law — will be cast aside when the issue of the ICJ's advisory opinion, which conclusively defined the applicable rules and principles of international law on the matter — is brought before the Council for consideration. The importance of that issue with regard to the debate on justice and the rule of law — both generally and specifically in terms of Palestine — should not be underestimated. A prerequisite for the building by the Palestinian people of a different culture internally is the existence of a culture in which their rights are respected and in which the laws are upheld by an international community that promotes justice and peace by applying the same standard of law to all the peoples of the world.

The President: I call on the representative of Sweden.

Mr. Lidén (Sweden): Sweden fully aligns itself with the statement made earlier by the representative of the Netherlands on behalf of the European Union. Nonetheless, I would like to take the floor to highlight some issues that Sweden believes to be of particular importance.

As Members of the Organization, we have a duty to respect and promote the rule of law. That applies both at the national level and in our international relations. Without the rule of law, there can be neither economic progress nor social justice. We therefore welcome the Secretary-General's intention to make the rule of law and transitional justice in conflict and post-conflict societies a priority for the remainder of his tenure.

As in our intervention in the debate on this item last year, Sweden would like to put extra emphasis on the issue of prevention. In the Secretary-General's words, "an ounce of prevention is worth significantly more than a pound of cure" (*S/2004/616, para. 4*). The experience of the United Nations in the field of justice and the rule of law in post-conflict situations should enhance our ability to act early to prevent conflicts. As stated by the Secretary-General, the root causes of conflict have often been left unaddressed:

> "Peace and stability can only prevail if the population perceives that politically charged issues, such as ethnic discrimination, unequal distribution of wealth and social services, abuse of power, denial of the right to property or citizenship and territorial disputes between States, can be addressed in a legitimate and fair manner. Viewed this way, prevention is the first imperative of justice." (*Ibid.*)

Sweden fully subscribes to that view. To recognize these links and to address the root causes in time will require enhanced coordination among all the relevant actors.

Prevention is one of the Security Council's responsibilities, as reaffirmed by its resolution 1366 (2001). Peace-building efforts in the area of the rule of law and justice in post-conflict societies constitute one form of preventive action. It reduces the risk that such societies will fall back into conflict.

Domestic institutions must be complemented by international and multilateral action. The existence of the International Criminal Court is a deterrent for presumptive perpetrators; so is the readiness of domestic legal systems to apply universal jurisdiction for international crimes. Not only do we need to make the Rome Statute of the International Criminal Court universal; we also must increase cooperation between domestic legal authorities.

Increased focus on those matters requires concrete action within the Secretariat, and changes in the Organization may be needed. In that context, I welcome the interesting proposals on the rule of law and transitional justice submitted by Finland, Germany and Jordan.

Another key issue is the division of labour between the various bodies of the United Nations and the international community. This should be determined by needs, not by budgetary concerns. Further, we must ensure better cooperation between those bodies, not least regarding the transition of responsibilities. The overall aim must be to work towards establishing the rule of law in a coherent fashion and through the whole transition from conflict to peacekeeping and humanitarian assistance to sustainable development.

Finally, let me stress three facts that are sometimes overlooked.

First, attorneys — defence lawyers and others — are vital to a nation's legal system. Not only do they provide the representation and assistance to which both accused and victims have a right; they also contribute to the rule of law, by ensuring that authorities are held to account and by defending human rights. Secondly, concerning the importance of gender justice, the outcome of the conference organized by the United Nations Development Fund for Women (UNIFEM) and the International Legal Assistance Consortium (ILAC) conference in September could prove valuable in mainstreaming gender issues in the area of the rule of law and in contributing to further implementation of Security Council resolution 1325 (2000) concerning women and peace and security.

Thirdly, no one — including peacekeepers — is above the law. We welcome the bulletin of the Secretary-General on special measures for protection from sexual exploitation and sexual abuse, and believe it is essential that any United Nations personnel not

complying with those minimum standards be held accountable.

The rule of law is a means of protecting the dignity of all human beings as well as the foundation for well-functioning societies. Sweden is grateful that the issue of rule of law and transitional justice is brought to the fore and that it remains on the agenda of the Security Council and the United Nations at large. It is by focusing on the promotion and respect for justice and the rule of law in conflict and post-conflict societies that we might be able to prevent conflicts from reoccurring.

The President: I thank the representative of Sweden. I now give the floor to the representative of Argentina.

Mr. D'Alotto (Argentina) (*spoke in Spanish*): Allow me first to thank you, Sir, for convening the open debate. I would also like to thank our compatriot, Mr. Juan Méndez, Special Adviser to the Secretary-General on the Prevention of Genocide and Director of the International Center for Transitional Justice, for his very useful and interesting statement. We would also like to thank Mr. Mark Malloch Brown of the United Nations Development Programme for his interesting statement this afternoon, which injected the development perspective into our debate.

The Secretary-General dedicated his inaugural statement at the fifty-ninth session of the General Assembly to underlining the importance of law and justice at the national and international level. This is not the first time the Security Council has analysed the question of the rule of law and justice. In our opinion, it is fitting that, under the presidency of the United Kingdom, we should again follow up on developments in this field.

One year ago, Argentina concluded its statement in the debate on this same topic with the following words:

> "imagination, flexibility and resources will always be indispensable. But perhaps the most important of all is for the Security Council, the Secretariat and all organs of the United Nations to institutionalize once and for all in their procedures, strategies and policies the elements that the United Kingdom has invited us to consider today. Justice and the rule of law are prerequisites for community life. Peace is not possible without them". (*S/PV.4835, p. 29*)

The Secretary-General, in the report before us today (S/2004/616), has presented a series of forward-looking recommendations along these lines. We consider them essential for the future efforts of the United Nations in strengthening the rule of law and the reign of justice in societies where conflict has taken place or exists and in places where institutions have collapsed.

As stated in the report, the United Nations has accumulated great experience in the task of reconstructing peace after conflict, such as in Timor-Leste and Kosovo. We know that this task has not been easy. The United Nations is also committed to it in Haiti. It is important, then, not to waste the experience but to transform it into something productive.

One specific point in the report that we would like to emphasize, is that, as the Secretary-General noted, the United Nations, and the Security Council, in particular, must conduct a careful analysis of specific needs in terms of the rule of law and justice in every country hosting peacekeeping missions or assistance programmes. Such an analysis is also necessary in order to identify the part to be played by the United Nations in peacekeeping operations. Peacekeeping operations, especially the most complex ones — and most of the current operations are complex — must include from the outset strengthening the rule of law components within their mandates.

As the Secretary-General has stated, we must avoid the introduction of foreign models. The affected societies must have ownership of the reconstruction process, and in that sense, the active participation of civil society is fundamental.

We must, therefore, work on preparing a set of practical proposals or guidelines to assist and guide the work of the organs and areas involved. The opportunity to do so is here and now, while we are all involved in the process of reforming and strengthening the Organization. This is why the recommendations in paragraphs 64 and 65 of the report should be carefully followed up. We must find a suitable way of putting them into practice, so that the ideas expressed in the report of the Secretary-General and this debate can produce tangible results.

We consider that recommendations (a) and (b) of paragraph 65 should serve as the initial point of departure for work on the institutionalization of the issue in the agenda of the United Nations. In recommendation (a), the Executive Committee on Peace and Security is asked to craft proposals to improve the ability of the United Nations system to support the rule of law and justice. In recommendation (b), the integration of those considerations into the planning of peacekeeping missions is requested.

The legal basis for United Nations response and international action must include, in addition to the Charter, the legal framework at the international level covering human rights, international humanitarian law, international criminal law and the international rights of refugees.

We would like to emphasize that the international community can currently rely on a number of instruments created to bring to justice the perpetrators of serious violations of human rights and humanitarian law, in keeping with that legal framework.

The Security Council, in a creative interpretation of its powers under article 39 of the Charter, has created special tribunals to judge the most serious crimes committed in the former Yugoslavia and Rwanda and to respond to situations in Sierra Leone, Kosovo, Timor-Leste and Afghanistan. We must mention the important role played by truth and reconciliation commissions, as in the case of Sierra Leone.

However, the main instrument available to the international community in its fight against impunity is the International Criminal Court (ICC). We agree with the Secretary-General that it is extremely necessary to promote and support the Court's central role in the effort to strengthen the rule of law.

We must ensure that the Court has the necessary resources to be able to fulfil its functions. During these early years of its existence it is indispensable to support the work of the Office of the Prosecutor in the investigation and to prosecution of persons responsible for war crimes, crimes against humanity or genocide, whenever national authorities are unable or unwilling to do so.

International tribunals can act as a deterrent within the scheme of international security that has emerged over the last few years. They are a useful tool in the maintenance of international peace and security, which is the responsibility of the United Nations, and in particular of the Security Council.

To our way of thinking, there are no prefabricated solutions. That is why, in addition to the measures which the United Nations and the international tribunals take in order to strengthen the rule of law and justice, it will also be of vital importance to carefully analyse and learn from the experience accumulated at the national level in individual countries.

Argentina is a democracy where the rule of law prevails. The institutional stability which our country has enjoyed for more than 20 years demonstrates its strength. We therefore believe that our experience in successfully transitioning to democracy, as well as the experience of other States Members of the Organization in that respect, could be of use to those societies that are undergoing the process today.

The President: The next speaker is the representative of Singapore, to whom I give the floor.

Mr. Menon (Singapore): I would like at the outset to thank you, Sir, and the delegation of the United Kingdom, for leading the effort on this important subject, which has culminated in the excellent report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616).

In his statement to the General Assembly two weeks ago (see A/59/PV.3), the Secretary-General pointed out that the rule of law starts at home, but that in too many places it remains elusive. He further said that it is by reintroducing the rule of law, and confidence in its impartial application, that we can hope to resuscitate societies shattered by conflict. With those few words, the Secretary-General put his finger on a major underlying cause of conflict and identified the approach to putting a country back on its feet. Nevertheless, we should not underestimate the immense difficulties of trying to put a post-conflict State back together once its political, economic and social fabric have been torn apart. It can sometimes be close to an impossible task — like all the King's men trying to put Humpty-Dumpty together again.

It is therefore apt that the Secretary-General stressed in his report that prevention is worth significantly more than cure. We share the Secretary-

General's view on that matter, as well as the views expressed by the Administrator of the United Nations Development Programme, Mr. Mark Malloch Brown, an hour ago on the need to anchor justice and the rule of law in societies.

As a multiracial, multireligious nation, we in Singapore have never taken racial, religious and political stability for granted and have always made conscious efforts to promote social cohesion through sharing the benefits of progress, equal opportunities for all and a meritocracy — the best man or woman for the job, especially as leaders in Government. Similarly, we have always made it a point to ensure that the rule of law is applied indiscriminately both to citizens and to non-citizens. Singapore therefore welcomes the call to strengthen the rule of law in the administration of justice in all States, and the steps put forward to address issues of transitional justice in conflict and post-conflict societies.

The Singapore delegation has been involved with a number of other delegations and external organizations, such as the International Center for Transitional Justice, in a series of useful discussions and exchanges of views on the experiences of the international community on this subject, especially over the past 10 years. I would like to make some broad observations on this subject of transitional justice and the rule of law, in relation to which I would like to highlight two aspects.

First, in a post-conflict situation, the challenge of filling the rule of law vacuum is a key one for many United Nations peace operations. The report recognizes the large and growing demand for expertise in assisting post-conflict countries to establish transitional justice processes, restore shattered justice systems and rebuild the rule of law. That is why it is vital that the United Nations develop a framework to tap existing external expertise and resources to complement the Secretariat's in-house experience. In post-conflict situations, there is also often a need to introduce immediately a transitional set of laws, if the old bodies of law, where they existed, had been unfair, abused or otherwise discredited. In this regard, having a broad set of internationally-accepted transitional criminal codes, which should preferably have some built-in flexibility to allow adaptation to the different local contexts, could be invaluable to post-conflict work.

Together with that, where a culture of the rule of law has been absent, one may need to provide for some form of public education to instil such a culture — a culture that most of us who live in functional societies may take for granted.

The second aspect is that of transitional justice. That should be neither an end in itself nor an exercise aimed at salving the international community's conscience for its past inactions. Rather, it should take into account the best interests of the victims of violence and grave injustice, while at the same time serving a broader goal of sending a signal to all would-be perpetrators of large-scale abuses that the era of impunity is over. In this regard, it is important to bear in mind that no two societies and situations are the same, and that there are no model answers that one can simply apply to a post-conflict situation.

The institutions and practices of established States have evolved over time — sometimes over centuries — while those of most new States, including States in a post-conflict situation, have had to be either created from scratch or elaborated immediately and put into place. This is clearly not the best way to get things done. It is therefore important that national stakeholders be closely consulted with a view to arriving at a solution that best serves the interests of the people in terms of transitional justice, bearing in mind what would work best to help heal wounds, using the limited resources available and taking account of the urgent competition for these resources, and, where applicable, the risk of its impact on fragile peace processes.

On the last point, unfortunately, the reality is that in many post-conflict situations the international community lacks either the political will or the capacity to ensure the disarmament of armed groups, which remain a source of lawlessness and a threat to peace and stability, thereby creating the potential of renewed conflict. It would be counter-productive for us if, in our haste and impatience to pursue transitional justice, we were to cause a return to conflict, renewed violence and suffering.

The Secretary-General's report has also rightly pointed out that the international community, in helping to bring about transitional justice and the rule of law, should bear in mind that its role is not to create international substitutes for national structures but to help build domestic justice capacities. This is

important because the goal is to leave in place a sustainable independent system that works, even if such a goal can be attained only after years, rather than months, which is especially likely to be the case if there is a need to train the local judiciary and judicial personnel from scratch.

Questions have been asked as to what justice, especially transitional justice, is worth. This is not an easy question to answer. In this regard, I would like to cite the reply to a question that the British Broadcasting Corporation posed, in an interview on 4 October, to William Shawcross, a long-time advocate of bringing the Khmer Rouge to justice. After noting that the Cambodian Government had estimated that the trials under the Cambodia Tribunal were going to cost $50 million, Mr. Shawcross said: "that raises another very interesting question: would that money not be better spent for Cambodia by reinvigorating and restoring the Cambodian judicial system?"

I leave that as food for thought. But before I conclude, I would like to note that what we — that is, a small number of delegations, including members of the Security Council — have been doing on this issue can be qualified as norm-making. This is why my delegation welcomes this open debate. It is appropriate that this issue now be discussed by the General Assembly, the principal norm-making body of the United Nations — especially if we acknowledge that the rule of law is something that should be mainstreamed into every part of the United Nations system, which will require the universal support of all Member States. In this regard, I understand that discussions on this issue are being envisaged for later this month in the Sixth Committee. My delegation welcomes that development.

The President: The next speaker is the representative of Burundi, to whom I give the floor.

Mr. Nteturuye (Burundi) (*spoke in French*): The delegation of Burundi welcomes the initiative taken by the presidency of the United Kingdom, which, for the second year in a row, is organizing a debate on justice and the rule of law. We would also like to welcome the Secretary-General's very clear-sighted report (S/2004/616) around which we are basing our debate.

In order not to take up too much time, I shall deliver a condensed version of my statement and distribute the full text.

This debate is taking place more than four months after the adoption by the Council — on 21 May 2004 — of resolution 1545 (2004), which authorized the deployment of the United Nations Operation in Burundi. It is also taking place a few days after the deposit, here in New York on 21 September 2004, of the instruments of ratification of the Statute of the International Criminal Court by the Government of Burundi.

Last year I concluded my statement to the Council by affirming that Burundi needed a form of justice that would bring reconciliation and healing, after having emphasized that, in order for it to come about, such reconciliation must be based on truth and justice.

Since that time, provisional immunity granted to political leaders returning from exile, as well as the release of hundreds of political prisoners, as recommended by an international ad hoc committee, have caused upheaval in the prisons of my country. Indeed, prisoners from various political groups in the country have come together and denounced what they are calling a justice that protects those who gave orders and punishes those who followed orders. They have threatened to make public all the secrets they hold with regard to the responsibility of certain current leaders for the violence that has afflicted the country.

What does that mean? It means that the provisional immunity granted political leaders is an extremely delicate political instrument in a situation of internal conflict where a manipulating elite is already hiding behind mass actions. It also means that the peace process is failing, if the high-level officials accused or convicted for playing a role in the national tragedy were those primarily responsible for the elections. This is even more dangerous when the elections could lead to a situation where the executioners are rehabilitated and given popular legitimacy, while the victims are once again threatened — more so than before — and are forced to seek shelter, which they would not find, when they were expecting reparation and rehabilitation.

The Security Council, which was asked in the Arusha Peace Agreement to set up an international judicial commission of inquiry, first preferred to send to Burundi an assessment mission from the Secretary-General last May. I was pleased to learn this morning that the report of the assessment mission is finally

going to be made available very soon. The mission was able to observe on the ground the strong desire of Burundians of all political stripes to see the commission of inquiry established as soon as possible.

The peace agreement also provides for the creation of a truth and reconciliation commission. The texts creating that commission have just been adopted by the National Assembly, and the Senate will approve them as well during its current session.

Burundians are beginning to worry, because they still remember another piece of work left unfinished by the United Nations: the report of the International Commission of Inquiry on Burundi (S/1996/682), which set out very serious conclusions on the identification of those behind what the same report called acts of genocide. The report was shelved instead of leading to concrete action or being reviewed or supplemented, if the Council deemed necessary. The Council's lack of action on its own report created a situation in which some Burundians now refer to the conclusions of that report while others reject it.

Another investigative report came out two years later. What I have in mind is the report (S/1998/1096, annex) that assembled information on the sale or supply of arms to those Rwandans based in the Democratic Republic of the Congo who were responsible for genocide. The report not only confirmed the existence of deliveries of arms to those mass killers, but it contained unpublished documents on cooperation between those killers and the Burundian rebel movements, also located in the Democratic Republic of the Congo. No action followed that report, which nevertheless shed light on the threat of genocide that still exists in the Great Lakes region, as confirmed by the heinous massacre on 13 August of Congolese refugees in the Gatumba camp in Burundi.

Here again, the Gatumba investigation is dragging its heels. Its conclusions would allow the Democratic Republic of the Congo and Burundi — and even the United Nations and the African Union — to decide on legal and political action to be carried out with regard to the groups responsible for the massacre, in particular the PALIPEHUTU/FNL, which has claimed responsibility for this deed from the very first day and which heads of State of the subregion have now declared to be a terrorist organization.

The Security Council has already shown that it can take strong measures to try those responsible for serious crimes — when, for example, it created the ad hoc international tribunals for the former Yugoslavia and for Rwanda, the Special Court for Sierra Leone and the extraordinary chambers to try Khmer Rouge leaders in Cambodia. For the time being, Burundians are asking only for an international judicial commission of inquiry. When the truth emerges from that investigation and from the investigation to be carried out by the national Truth and Reconciliation Commission, Burundians will be in a position to decide what type of justice should be meted out to the guilty in order to achieve reconciliation. But this United Nations contribution is urgent, because after elections it will be politically delicate to try those who have been elected, who will in fact be tempted to initiate laws that will protect them and whitewash them forever.

Since the deployment of the United Nations Operation in Burundi (ONUB), the Organization has been playing a central role in the follow-up of the peace process in Burundi. The Burundian population hopes that, thanks to the presence and the assistance of ONUB, the peace process will culminate in a genuine peace that will lay the foundation for economic reconstruction and national reconciliation. Because ONUB is deployed in the field, it is, de facto, a credible point of reference and the international community's legitimate representative in Burundi. That is why the head of ONUB, the Special Representative of the Secretary-General, is trying, in addition to mediation, to coordinate and synchronize the activities of external and internal partners for peace in Burundi. The Government of Burundi reiterates its commitment to cooperate fully with Ms. McAskie, who is leading ONUB on behalf of the Secretary-General and the Security Council for the cause of peace in Burundi and on its borders.

The President: I now give the floor to the representative of India.

Mr. Sen (India): We congratulate you, Sir, on your assumption of the Council presidency for the month of October. We also congratulate Ambassador Juan Antonio Yáñez-Barnuevo and other members of the Spanish delegation for their able stewardship of the Council in September.

My delegation welcomes this opportunity to participate in the open Council to discuss the item "Justice and the rule of law: the United Nations role".

As your compatriot and fellow diplomat turned political leader, Paddy Ashdown, famously observed on 28 October 2002 in his *New York Times* article "What I learned in Bosnia", "In hindsight, we should have put the establishment of the rule of law first, for everything else depends on it."

To adhere to the time limit that the President set earlier, I shall outline only the essential points of my statement, since the full text has been circulated.

We have read with interest the report of the Secretary-General (S/2004/616) on the rule of law and transitional justice in conflict and post-conflict societies. We commend the Secretary-General for emphasizing the need to eschew a one-size-fits-all formula and the importation of foreign models, and for stressing the importance of basing our work on national assessments, national participation and national needs and aspirations.

The temptation to impose external models without the required sensitivity to cultural and other factors is sometimes strong on the part of many. The emphasis on international norms and standards often leads some Member States, international organizations and civil society organizations down that path.

Even as we underscore the importance of respecting international standards, the assistance rendered to a particular society recovering from conflict must necessarily take into account its sociocultural specificities and particularities so that the support rendered by the international community becomes durable and sustainable. If the gulf between the legal structure and social norms in that society is too wide, giving effect to legal prescriptions could carry far too high a socio-political cost.

To our mind, the specific function of the legal system is crucial. Many conflicts arise from clan, ethnic, economic and other group grievances. It is important to address these through the process of the administration of law itself. Segmental entities can be transformed into healthy political competition that sustains constitutional order. The constitutional expert Granville Austin therefore has rightly said: "This is messy, but it is democracy and social revolution in action." Some traditional liberal Western models, therefore, may not be adequate. A multicultural, socially activist legal arrangement would, in such cases, be far more appropriate.

We agree with the Secretary-General that the careful sequencing of activities relating to rule of law reforms and transitional justice with post-conflict elections is vital not only to ensure their success and legitimacy, but also to preserve the fragile peace processes in societies emerging from conflict. United Nations peacekeeping operations are envisaged as short-term interventions. While the idea of incorporating components of rule of law reforms and transitional justice activities in a United Nations peacekeeping operation may be unexceptionable, we ought to remember that building the rule of law and fostering democracy are long-term processes. These are beyond the capability of personnel traditionally involved in peacekeeping operations. However, we strongly believe that they can lay a vital foundation if they embody, in their outlook and behaviour, a long-standing democratic and multicultural tradition.

In the past decade, the United Nations has resorted increasingly to establishing a wide range of special criminal tribunals, including ad hoc criminal tribunals, as subsidiary organs of the Security Council. Their track record has been mixed. In some cases, they have succeeded in establishing accountability for perpetrators and in instilling greater public confidence in post-conflict societies that have enabled those societies to move forward. The exact balance between retributive justice and the need for reconciliation through an amnesty should be determined not a priori or ideologically, but strictly by pragmatic considerations of establishing an enduring peace.

The Secretary-General is also correct in being chary of a dependence on voluntary contributions for the financing of United Nations tribunals, not only because of its ephemeral nature, but also because of the undue influence that this could give to donors in dealing with vulnerable local institutions normally characteristic of post-conflict societies.

Any meaningful capacity-building is possible only when the society concerned establishes its governing institutions and supreme law and moves into the institution-building phase. National stakeholders have to set their reform vision and agenda for that purpose so that they can claim local ownership. That work can be done both multilaterally and very effectively on a bilateral basis as well.

I should also like to refer in that context to the capacity and expertise within the United Nations

system in the area of the rule of law and transitional justice. We find that such expertise exists not only in different parts of the Secretariat, but also in the secretariats of the funds and programmes. The need for different parts of the Secretariat, including those of the funds and programmes, to work synergetically and in cooperation with each other rather than in competition, cannot be overemphasized. There has been some talk of creating an independent structure dedicated exclusively to that question. We are not yet convinced of the efficacy of such an approach. At this stage, better coordination among existing units and optimal utilization of the existing resources are called for.

The role of the United Nations in supporting the rule of law and transitional justice in post-conflict societies must involve assistance through a system-wide, coherent, needs-based approach which can result in the consolidation of security and peace, social justice and democracy. In all those areas, the United Nations should play a supportive and facilitating role.

The President: I thank the representative of India for the way in which he set out the main points of his circulated speech. I commend that to colleagues.

I now give the floor to the representative of the Republic of Korea.

Mr. Kim Sam-hoon (Republic of Korea): I would like to thank you, Sir, for initiating this important discussion of the rule of law and transitional justice. As the Secretary-General made clear in his address to the General Assembly last month, we are duty-bound to protect, enhance and extend the rule of law to all people in all places, including societies that are making the difficult transition from conflict to peace.

In that regard, we welcome the report of the Secretary-General as being comprehensive and realistic in pointing the way forward. The Secretary-General's recommendations in paragraph 64 are worthy of serious consideration by Member States and the Security Council. In particular, we support the emphasis on respect for the human rights of those groups that are most vulnerable to conflict, such as women and children.

We wish to call attention to important developments in the way that the Security Council has functioned since the end of the cold war. First, we are pleased to note that cooperation among Security Council members has increased substantially as the Council discharges its solemn responsibility to maintain international peace and security. Secondly, the conflicts addressed by the Security Council since the early 1990s have tended to be intra-State conflicts stemming from failing or failed States, rather than the inter-State conflicts that have traditionally been the Council's focus. Those conflicts within States raise a different set of issues and require a different approach. In that regard, we welcome and support the Security Council's recent trend towards integrating transitional justice and rule-of-law concerns into the mandates of United Nations peace missions.

Indeed, the rule of law, the promotion of human rights, the delivery of justice and the establishment of democratic institutions can no longer be considered luxuries, if ever they could. Rather, they are indispensable requirements for restoring peace and preventing conflict-ravaged societies from relapsing into violence and chaos. Without a reasonable degree of justice and rule of law, peace is simply not sustainable.

Peace missions in conflict and post-conflict societies must integrate into their operations three key aspects of justice and the rule of law. These are re-establishing the legal order that existed prior to the conflict, undertaking reform of the justice system, both substantively and procedurally, and administering transitional justice fairly and effectively in a way that facilitates the healing process and expedites national reconciliation. Peace missions must also engage in strategic planning to ensure that the justice system does not break down once the mission is terminated, and as such, it is imperative that peace missions work towards establishing sustainable national capacities for justice administration.

Those, however, are extremely daunting tasks that can take a long time to achieve. There is no internationally established procedure that can be applied uniformly to all conflicts. Ensuring justice is also a very expensive undertaking, as evidenced by the ad hoc tribunals for the former Yugoslavia and Rwanda. In that vein, the full operation of the International Criminal Court as an independent, effective and fair permanent criminal tribunal is a most welcome development that will greatly enhance the administration of justice. The Republic of Korea hopes to see the Court attain universality at an early date.

In order to deal with the complex socio-economic problems in conflict and post-conflict societies, we encourage more systematic coordination among all international and local actors on the ground, including the Security Council, United Nations peacekeepers, United Nations funds and programmes, civil society, non-governmental organizations and donors.

The Security Council, with the unique authority and power entrusted to it by the United Nations Charter, has been the guiding force behind concerted international efforts at post-conflict peace-building. However, we share the concern that the Security Council is currently overburdened, having increasingly become involved in the broad and time-consuming task of nation-building. Furthermore, because it can be difficult to determine when that task is complete, or even what would constitute completion, the Security Council may not always be able to articulate exit strategies where necessary.

In that context, we must examine the long-term fitness of the Security Council for these ever-expanding tasks. We look forward to the ideas and recommendations of the High-Level Panel on Threats, Challenges and Change regarding possible reform of the way the Security Council interacts with other United Nations bodies, in particular the General Assembly and the Economic and Social Council, and regarding possible changes in the structure and functions of major United Nations bodies.

In addition, the Republic of Korea deems worthy of exploration the Finnish-German-Jordanian joint proposal to create a central unit within the Secretariat to coordinate the rule-of-law components of peace-building efforts.

In conclusion, the Republic of Korea reiterates its continued support for the Security Council, and for the United Nations as a whole, in their steadfast efforts to ensure that justice and the rule of law are extended to every human being in every society.

The President: I now call on the representative of Costa Rica.

Mr. Stagno Ugarte (Costa Rica) (*spoke in Spanish*): Allow me, first of all, to thank you, Mr. President, for having convened this open debate of the Security Council to take up the role of the United Nations in promoting justice and the rule of law. I would also like to thank the Secretary-General for his valuable report, as well as the delegations of Germany, Finland and Jordan for the informal working document they have prepared as a contribution to our deliberations.

As the Secretary-General rightly stated in his report, peace, justice and democracy are fundamental prerequisites that reinforce each other. There can be no peace if there is no democracy. There can be no democracy if there is no legal certainty and an effective and impartial judiciary. There cannot be justice without peace and a legitimate and responsible Government. In that context, the promotion of justice and the strengthening of the rule of law are essential elements in the promotion of international peace and security, in the domestic stability of countries that have experienced armed conflict and in the sustainable development of all the nations of the world.

The concept of the rule of law goes beyond the mere administration of justice when legal standards are violated. The rule of law is an essential aspect of democratic governance. The rule of law means that all persons, physical and legal, must be subject to a body of clear, precise and pre-existing laws that provide legal clarity as to what types of actions are prohibited and that establish a framework of minimum guarantees for an individual's freedom of action. It is also essential that Government authorities be subject to a rigorous set of standards that circumscribe the scope of their actions and protect private citizens from any abuse of power on the part of the State.

In that connection, we can identify three different dimensions of the rule of law: the legislative, the administrative and the judicial. From the legislative perspective, the rule of law demands transparency, clarity and moderation in the promulgation of laws. Legislation must protect and guarantee the fundamental rights and freedoms of all individuals. From the administrative point of view, the rule of law requires a conscious effort to circumscribe the use of State authority in order to protect an individual's sphere of action. Any abuse of power or instance of corruption by public officials is a violation of the rule of law. From a judicial point of view, the rule of law must provide remedies in order to correct any violations or harm done when the legal order is violated, as well as to protect the fundamental rights of individuals.

Promoting the rule of law in transitional situations at the end of armed conflicts requires action

in all three dimensions. The United Nations must assist communities in transition to adopt a clear-cut, fair and impartial legal framework that guarantees full respect for the human rights of all citizens. From the administrative point of view, the Organization must promote responsible governance that democratically responds to the aspirations of people while providing genuine accountability for its own activities. From the judicial perspective, the international community must lend assistance and technical support to courts and police in order to increase their effectiveness, legitimacy and independence while protecting individual rights. As the Secretary-General correctly stated in his report, all those elements are interdependent, and all require joint action.

The administration of justice in transitional situations is particularly important in cases where grave violations of international humanitarian law have occurred: genocide, crimes against humanity and massive violations of human rights. Such situations require both justice and reconciliation. My delegation fully agrees with the Secretary-General that we must never extend amnesty to the perpetrators of such crimes. At the same time, we believe that the Organization must promote any mechanism for reconciliation and social reintegration that will make it possible to overcome the trauma of armed conflict. To the extent possible, every society should design its own mechanisms for reconciliation.

With regard to serious cases in which it is necessary to ensure the administration of justice, the United Nations must ensure that legal processes fully respect the rights of accused persons to due process and that places of detention are in full conformity with minimum standards for the treatment of prisoners. Costa Rica is extremely concerned at seeing traditional mechanisms being used to dispense justice, for those usually do not include minimum guarantees to protect the basic rights of accused persons.

Costa Rica fully supports the Secretary-General's recommendation that the Organization should not participate in any tribunal that can hand down a death sentence.

In cases in which a State is either incapable or unwilling to try the perpetrators of the most serious crimes, the international community must — and I emphasize must — have recourse to the International Criminal Court, which is a standing impartial body with judges who enjoy the highest possible moral and professional qualities that can provide the correct administration of international justice. The International Criminal Court is a bulwark against impunity and legal uncertainty. We call on the Security Council to in future make full use of the option of submitting particular cases to the International Criminal Court.

As the Secretary-General has said, it is now essential that the international community provide this new institution with the required resources and support so that it can investigate, prosecute and try those responsible for war crimes, crimes against humanity and genocide. We appeal to everyone to continue strengthening the Court.

My delegation objects to any future establishment by the United Nations of special or mixed criminal tribunals. First of all, the ICC is a viable and economic alternative. Secondly, while such tribunals of a special nature did have a salutary effect at the outset, their costs have snowballed, and they have fallen prey to countless difficulties that have prevented the prompt and effective administration of justice. Mixed tribunals are even more dubious, because they do not have sufficient budgets; and, despite all the efforts of the Secretariat, they do not always provide the minimum guarantees of due process.

Furthermore, we fully agree with the delegations of Finland, Germany and Jordan in saying that institutional reform is necessary so that this Organization can contribute effectively to the promotion of justice and the strengthening of the rule of law.

We cannot allow a task of such importance to be spread out among 11 different organs and departments. We agree with the aforementioned three delegations that this task must be assigned to a centralized body. However, such an administrative streamlining should not create any further confusion in the chain of command or in the internal hierarchy of the Secretariat.

From this perspective, my delegation supports option C in the working paper prepared by the three delegations — in other words, my delegation supports the creation of a new division entrusted with the promotion of justice and strengthening the rule of law.

Finally, promotion of justice and strengthening the rule of law cannot be confined only to post-conflict

situations. Justice is a delicate organism that requires, in all climates, and under all latitudes, constant care if it is to flourish. The promotion of justice and strengthening the rule of the law by the United Nations cannot be limited only to exceptional situations falling under the Security Council's responsibilities. This should not be the case. Our Organization must promote justice and the rule of law in every single nation of the world. From this perspective, it is worth considering the possibility of including an item on the rule of law on the General Assembly's agenda.

The President: From the viewpoint of the presidency, I would say to the representative of Costa Rica that we share totally that last sentiment: that rule of law applies to everybody, and that all organs and agencies of the United Nations have an interest in it. It is not the exclusive purview of the Security Council — not by any means. This debate reflects the interest of the Security Council in the subject. But so does everyone else have an interest.

I now give the floor to the representative of Japan.

Mr. Haraguchi (Japan): My Government places importance on the consolidation of peace in unstable post-conflict societies. In our view, efforts to realize justice and the rule of law in the transitional period until peace is consolidated are of the utmost importance. However, we must not forget that societies in the transitional period are extremely fragile. It is, therefore, necessary to search for the best way to achieve justice and the rule of law while maintaining ownership by the people. In the long run, capacity-building will be the most important issue. In the short term, various elements need to be taken into consideration. On occasion there may be cases in which things could go wrong if they are not undertaken with a high level of flexibility.

From such a perspective, Japan wishes to focus on three points. First, it is important for Member States to exert efforts in establishing justice and the rule of law within their own borders, in parallel with assistance extended by the United Nations. Since the United Nations is a world forum enjoying the most universal membership, a framework achieved through extensive discussions within the United Nations gives us every right to expect the full cooperation of the international community in its implementation.

Efforts to achieve justice and to establish the rule of law in peacetime provide a basis for preventing conflicts from recurring. Furthermore, at times when the United Nations is conducting its operations in failed States and other problem areas, or when the United Nations becomes responsible for administration on a temporary basis in the transitional period, its activities sometimes play a direct role in the establishment of the rule of law. These cases, however, should be regarded as exceptional, and the United Nations should make every effort to transfer primary responsibility to the administrative organization concerned at the earliest possible opportunity.

Secondly, when the United Nations undertakes assistance in the establishment of justice and the rule of law, it is essential to pay due respect to the support and participation of the people of the recipient States. For example, in Timor-Leste, while the serious crimes of the past are being prosecuted by the courts through the legal process, the activities of the Commission for Reception, Truth and Reconciliation, whose aim is to realize reconciliation through earnest reflection on past conduct, are proving to be effective. The work to establish the rule of law serves not only to punish the criminals but also to discourage the commission of such crimes in the future and, thereby, to prevent conflicts from recurring.

If we want the results of such work to take root in the region, it is indispensable for the people of the region in question to have a sense of ownership regarding the significance of the rule of law. For that reason, we should not overlook the importance of publicity and educational activities.

Thirdly, the significance of the International Criminal Court (ICC) should not be underestimated in any way. However, it should be borne in mind that the ICC is not a panacea for all humanitarian tragedies. In particular, the atrocities that occurred prior to the establishment of the ICC in 2002 still need to be addressed. In this connection, when societies or States concerned were incapable of reacting appropriately in the immediate aftermath of conflict, the international community established tribunals, such as the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR) and the Special Court for Sierra Leone. These courts fulfil multiple purposes — bringing to justice persons allegedly responsible for serious violations of international humanitarian law,

establishing the foundation for post-conflict public order and realizing universal justice.

In Cambodia, work is continuing towards the establishment of extraordinary chambers within the existing national court, in cooperation with the United Nations, for the prosecution of Khmer Rouge leaders. One of the lessons we have learned from the management of ICTY and ICTR is that the administrative organizations of tribunals financed through assessed contributions can grow to be far bigger than is necessary. The international community is obliged to design a structure that will yield maximum efficiency and effectiveness for international tribunals. My Government will continue to closely monitor the activities of the ICTY and the ICTR to help ensure that their intended objectives will be achieved through the endorsed completion strategies.

Japan also has been working on the early establishment of the Khmer Rouge trials extraordinary chambers with assistance from the international community, and welcomes the fact that the Cambodian National Assembly recently approved an agreement with the United Nations concerning the prosecution of former Khmer Rouge leaders. Japan expects that further steps will be taken towards its prompt ratification by Cambodia. The establishment of these chambers will be an important step for justice and the rule of law in Cambodia, and, for that reason, Japan urges Member States to cooperate to the best of their abilities to assure the success of these trials.

The President: I thank the representative of Japan for shortening his speech in order to conserve time.

I now give the floor to the representative of Peru.

Mr. De Rivero (Peru) (*spoke in Spanish*): Mr. President, I should like to congratulate you on your assumption of the presidency of the Security Council and in particular for your initiative in convening this public meeting on the role of the United Nations in the promotion of justice and the rule of law. I am also grateful to the Secretary-General for his report on this important topic.

The rule of law at the national level translates into a State based on the rule of law. At the international level, it is the multilateralism we find in the Charter of the United Nations. It promotes stability and predictability in the international system and is a key factor in the maintenance of international peace and security and respect for human rights. Ultimately, we cannot promote the rule of law if the Charter of the United Nations is not respected.

The international community, fortunately, has expressed its recognition of the importance of the rule of law and the need to combat impunity through the creation of the International Criminal Court. I would like to reaffirm here my country's commitment fully to support the Court.

Empirical experience has shown that justice and the rule of law are not easy to achieve. They cannot be brought about overnight, least of all ,a societies that have never practiced democracy, where institutions are weak, and where the values espoused by particular groups prevail over the law or a national social contract.

In many cases, the establishment of the rule of law represents a serious cultural problem — perhaps more cultural than political — for it touches on the self-respect of a people. It is therefore a very complex, lengthy and sometimes historic endeavour that requires the resolute support of the international community — which we are providing — but also it requires a commitment on the part of a society itself, particularly in the case of civil conflicts.

Cultural changes are therefore required that lead to profound transformations in the legal, judicial, police and penal-law spheres, and, above all, the dissemination of a culture of respect for human rights and tolerance among the people who wish to carry out such reforms.

That is why the challenge is so great. It involves promoting tolerance and establishing the rule of law in societies where social marginalization has been widespread, where there has been no social contract to speak of, or, if one existed, it has been destroyed as a result of political, ethnic or religious conflicts.

That is why Peru believes that any proposal aimed at re-establishing the rule of law must take into account the situation of each conflict-fractured society, because not all are the same. As the Secretary-General has said, we cannot import solutions from other realities, as they do not necessarily produce good results.

In the case of my country, the Truth and Reconciliation Commission was created in June 2001

to assign responsibility for the massive violations of human rights that took place from 1980 to 2000. The Commission has submitted a comprehensive plan for reparations, and the Government has begun to implement it formally through a collective plan for peace and development for the years 2004-2006. In parallel, victims are seeking justice on an individual basis before the competent national courts.

At any rate, in re-establishing justice and the rule of law, it is extremely important for the United Nations to elaborate preliminary proposals that take account of the national realities of the country that has lived through the conflict. The proposals should be based on wide-ranging consultations in which all national actors can participate. All of these inputs should be considered in crafting a strategy.

Such a methodology, based on broad-ranging consultations, should also be used later on, during the implementation phase and during the ongoing assessment of the goals laid down in the strategy. Only thus can we systematically bring about the re-establishment of the rule of law in societies that have disintegrated as a result of civil conflict.

We hope that the Council will adopt the recommendations set out in the report of the Secretary-General, which emphasize the non-imposition of external models and the need for prior assessment of national needs on the basis of a broad process of consultations at the national level.

Peru welcomes the Secretary-General's intention to ask the Executive Committee on Peace and Security to propose concrete measures on justice and the rule of law in post-conflict societies. We hope that such measures will be submitted for consideration by all States Members of the Organization.

Finally, I would like to say that, in almost all strategy studies undertaken nowadays, social marginalization is considered to be one of the main causes of civil war. Social marginalization means that political, ethnic and religious differences evolve into extreme rivalries and hatred, leading to crimes against humanity, which is what we here are trying to prevent.

That is why the social marginalization dimension must be taken into account in the context of any comprehensive approach to the restoration of the rule of law and justice in societies that have undergone serious civil conflicts.

The President: The next speaker is the representative of Fiji, to whom I give the floor.

Mr. Savua (Fiji): The Republic of the Fiji Islands subscribes to what was stated by the Secretary-General during the opening of the general debate of the fifty-ninth session of the General Assembly on the subject of the rule of law. As Members of the United Nations, we ought to look again into our collective conscience and ask whether we are doing enough to promote and preserve this universally accepted principle. We would also like to thank the Secretary-General for his report (S/2004/616) of 3 August 2004. We express our strong support for the International Criminal Court (ICC) and its plans to make a significant contribution to advance justice and the rule of law.

Fiji, like many others, has had its own experience with the breakdown of law and order; our country and our people suffered, and we are still recovering. We therefore appreciate the value and need for the upholding and preservation of justice and the rule of law.

In that regard, Fiji will draw guidance from paragraph 40 of the Secretary-General's report, which states that: "domestic justice systems should be the first resort in pursuit of accountability". The principle of complementarity is indeed at the heart of the Rome Statute. In addition, in paragraph 49, by encouraging States parties to implement the Rome Statute in their national legislation, the ICC serves as "a catalyst for enacting national laws against the gravest international crimes" and thereby strengthens national legal and judicial systems and their capacity to respond to justice and rule of law-related challenges.

We see the United Nations involvement in conflicts and post-conflict reconciliation and transitional justice as the execution of its obligations as enshrined in the Charter. However, given the complexity of the problems of today's world, a lot remains to be done. The United Nations requires our total commitment and support in order for it to satisfactorily achieve its obligations.

While Fiji acknowledges and commends the good work so far exerted by the United Nations in this field, we are at the same time cautiously aware that the challenges it faces are often compounded by the fact that the United Nations is frequently called upon to plan the restoration of the rule of law in peacekeeping and peace-making operations on extremely short

notice. Consequently, only short assessment visits — carried out with minimal human and financial resources — are made to the host country, although it is on the basis of those visits that the United Nations formulates its plans. There is, in our respectful assessment, a pressing need to address those impediments we have identified. Fiji would therefore support any suggestions for the strengthening of United Nations capacities in that regard. The early identification and close monitoring of countries or regions with the potential for conflicts to break out, the setting up of necessary measures and the determination of the appropriate mechanisms for addressing the root causes of differences, can and will assist in the prevention of any escalation of violence that may ultimately lead to horrific acts of genocide, crimes against humanity and war crimes.

Admittedly, some of our people, given the splendour of our geographical isolation, often see the role of the United Nations in the field of the rule of law and transitional justice as being one of restoration. Heinous and despicable acts of violence are committed and numerous human lives are lost before we insist on restoring order and normalcy. Justice and the rule of law are sacred when they are experienced by the living. We agree with the Secretary-General when he said that "in matters of justice and the rule of law, an ounce of prevention is worth significantly more than a pound of cure" (*S/2004/616, para. 4*).

The safety of United Nations personnel and premises has been a key question surrounding the return of the United Nations to Iraq ever since two bomb attacks against the Organization's offices in Baghdad last year led to the eventual withdrawal of all international staff. The envisioned security structure would consist of four elements, namely, international security staff, protection coordination officers, personal security details and guard units. In that regard and in response to the call by the Secretary-General for the participation of Member States, Fiji is preparing soldiers for deployment this month as personal security details and guard units to the United Nations Assistance Mission for Iraq.

The President: I now give the floor to the representative of Sierra Leone.

Mr. Pemagbi (Sierra Leone): My delegation warmly congratulates you, Mr. President, on your assumption of the presidency of the Security Council for the month of October. In the same vein, we commend your predecessor for his excellent handling of the affairs of the Council in September.

We thank the Secretary-General for his comprehensive report on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616), and applaud you, Mr. President, for the priority you have given to the discussion of that topic, the significance and relevance of which are evident in every part of the world today. As the Secretary-General remarked in his address to the General Assembly at its 3rd meeting, on 21 September, "the rule of law is at risk around the world".

Sierra Leone particularly welcomes the opportunity to participate in this debate because of our bitter experience with the maladministration of justice and abuse of the rule of law before and during our civil war. For nearly 11 years we witnessed the commission of horrendous crimes that resulted in many deaths, injuries and the wanton destruction of property. The experience of my country clearly demonstrates that the absence of the rule of law creates an atmosphere in which egregious crimes against international law can be perpetrated with impunity.

Sierra Leone welcomes the Secretary-General's report and endorses its observations and recommendations. Those observations and recommendations are consistent with the views of Sierra Leone that the rule of law is a necessary prerequisite for and an essential ingredient of justice and accountability.

Sierra Leone believes without a doubt that the International Criminal Court (ICC) is the instrument for bringing to justice alleged war criminals and reinforcing individual criminal responsibility for crimes against humanity, war crimes and genocide. The Government and people of Sierra Leone view those crimes seriously, and because of that we were among the first countries to sign and ratify the ICC Statute, whose objective is to promote the rule of law and deter impunity.

We now have a functioning ICC; nevertheless, we must recognize that much remains to be done to establish a fully effective international criminal justice system, with the ICC at its heart.

Respect for the rule of law within States, at the national level, promotes peace and stability. Equally, respect for the rule of law at the international level promotes international peace and security. Support for the ICC should be seen in that perspective. As the Secretary-General points out in paragraph 49 of his report, there is a great need for universal or near-universal ratification of the Statute of the ICC. In his statement to the General Assembly two weeks ago, he reminded us that every nation that proclaims the rule of law at home must respect it abroad.

My delegation would like to add that while ratification of the Statute is an important contribution to the rule of international law, it is equally important that the Statute be incorporated into domestic law to deter impunity.

Promotion of the rule of law and reform of the administration of justice system, especially in States emerging from conflict such as Sierra Leone, is very expensive. Respect for the rule of law cannot be separated from the problem of the availability of resources. It is not enough to recruit police, magistrates and other law enforcement officers; it is not enough to give them the best professional training, if they lack the means — the basic equipment and logistics — for doing the job for which they are trained. At the same time, they need incentives, such as decent salaries, if only as a weapon for eliminating corruption — that cancer in the body politic of many nations in the world today.

That is why, in that connection, Sierra Leone appreciates the assistance of the International Military Advisory Training Team and the United Kingdom, not only for the training of our security personnel, but also for providing their communications and other logistical needs. The United Kingdom is also supporting, among other things, Operation PEBU, the new housing project for our security personnel. The assistance provided by the United Nations Development Programme and the United Nations Mission in Sierra Leone for the construction of police barracks in the eastern and southern provinces of Sierra Leone is a very good and practical example of the role that the United Nations can also play in the administration of justice and the promotion of the rule of law.

As my Foreign Minister told the General Assembly last week (see A/59/PV.15), the Government of Sierra Leone is struggling, with limited resources, to reform its own system for the administration of justice. The current state of the justice system is reflected in the latest report of the Secretary-General on the United Nations Mission in Sierra Leone (S/2004/724). We have here another example of the important role the international community can play in providing concrete assistance in the promotion of the rule of law.

My delegation is also concerned about the serious financial situation of the Special Court for Sierra Leone, which was established in my country to address impunity and foster respect for the rule of law. Let me reiterate that the efficacy of the Court, and indeed its credibility, could be questioned unless urgent measures are taken to address its problems of funding. The Secretary-General, in paragraphs 40 and 41 of his report (S/2004/616), acknowledged the important role that ad hoc tribunals and hybrid courts such as the Special Court for Sierra Leone play in the quest to end impunity and bring about peace and reconciliation.

In this regard, let me renew our appeal for continued voluntary contributions, as well as the requested subventions for the Special Court from the regular budget of the United Nations. We recall President Kabbah's observation during the formal opening of the Court in March. He said this:

> "This is a Special Court for Sierra Leone, a symbol of the rule of law and an essential element in the pursuit of peace, justice and national reconciliation for the people of Sierra Leone. It is also a Special Court for the international community, a symbol of the rule of international law."

The least we can do for the victims of the heinous crimes committed in Sierra Leone is to ensure that justice is not only done but seen to be done. One sure way of doing this is to provide the Court with the funds it needs to perform its responsibilities.

I have the honour to inform the Security Council that one of the accountability mechanisms established in Sierra Leone, the Truth and Reconciliation Commission, released its report yesterday. The Commission was established with the assistance of the United Nations and the international community. This event is in itself an eloquent testimony of what the international community can achieve in fostering the rule of law. I should like to extend the profound thanks of the Government and the people of Sierra Leone to the international community for this practical

contribution to the rule of law in Sierra Leone and the rule of international law.

In conclusion, let me emphasize that justice and respect for the rule of law are the foundation, as well as the lubricant of the wheels, of peace and stability, development, accountable governance and democracy. By providing support for emerging democracies and post-conflict transitions to establish and/or strengthen mechanisms for enforcing justice and the rule of law, the United Nations will be adding a critical dimension to its efforts for peace. We look forward to the implementations of the recommendations contained in the Secretary-General's report.

The President: I give the floor to the representative of Canada.

Mr. Berry (Canada): Thank you, Mr. President, for providing an opportunity to contribute to this important debate and for the leadership the United Kingdom has shown, including by launching this discussion last year. We join those who have already congratulated the Secretary-General on his excellent report on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616). The report eloquently draws our attention to the challenges that we, the international community, face in a volatile world. Today I would like to touch on a number of issues that are of particular importance to the Government of Canada.

(*spoke in French*)

The rule of law is a profoundly practical idea, one that provides security and structure in a volatile world. While accessible and just laws are the foundation of the rule of law, it is in the consistent and just application of those laws that the rule of law attains its highest expression. To fail to apply the law to grave international crimes such as genocide, crimes against humanity and war crimes is the very negation of the rule of law.

(*spoke in English*)

It is for that reason that Canada urges all States to help strengthen the institutions that are at the forefront of the campaign against impunity. The International Criminal Court (ICC) stands out as the embodiment of the hopes and aspirations of the victims of the most serious international crimes. It offers us the best hope for ending impunity. It is therefore not surprising that it has so rapidly gained the support of a majority of United Nations Member States. We call on the States that have not already done so to ratify and implement the Rome Statute of the International Criminal Court. We also call on the Council to exercise its authority under the Rome Statute to refer situations to the ICC when appropriate. Through cooperation between the Security Council and the parties to the Rome Statute, we can build a reliable and responsible system to bring the world's worst criminals to justice and to protect their victims.

(*spoke in French*)

All too often, the victims of the worst international crimes are women and girls. The fourth anniversary of the adoption of resolution 1325 (2000), on women and peace and security, at the end of this month will provide the Council the opportunity to recall that it has recognized and affirmed the importance of taking gender perspectives into account in all aspects of peace-building. Integrating a gender perspective into the work of international criminal tribunals demands that violence against women be treated with at least the same seriousness as violence against men.

(*spoke in English*)

The work being done by the International Criminal Tribunals for the former Yugoslavia and Rwanda is also a major contribution to our efforts to combat impunity, but the operation of the Tribunals costs money. The timely payment of assessed contributions by all States is especially critical at this time, as the Tribunals embark on the final stages of their work, with a view to completing their mandates by the year 2010. Similarly, the Special Court for Sierra Leone has entered a critical phase in its mandate. Now is not the time to waver in our support. These tribunals match deeds to words in fostering the rule of law internationally. We must do the same by ensuring that our rhetorical support for those bodies is matched by our financial contributions. These courts are, after all, the rule of law in action.

(*spoke in French*)

We know that international tribunals can try only those most responsible for heinous crimes. The primary responsibility for prosecuting alleged offenders lies with States themselves. The implementation of the Rome Statute offers States the opportunity to enhance their domestic legal system and to ensure that criminal

trials are conducted in a manner consistent with standards agreed upon by the international community. Some States may require assistance in adapting their judicial systems to prosecute those responsible for war crimes, crimes against humanity and genocide. Canada has participated in preliminary discussions with a number of interested States about means of doing so, and will continue to work with others in order to provide that assistance.

(*spoke in English*)

This report helps us focus our minds on the efforts and challenges ahead. However, our work is not over. Terrible conflicts will continue to occur. Crimes such as genocide, crimes against humanity and war crimes will continue to be committed. Those acts will not immobilize us. Rather, they will galvanize us to ensure that the rule of law is not relegated to the status of an abstract concept, but instead serves as a guiding principle that animates our work.

The President: I now call on the representative of Mexico.

Mr. Gómez Robledo (Mexico) (*spoke in Spanish*): Mexico welcomes the report of the Secretary-General entitled "The rule of law and transitional justice in conflict and post-conflict societies" (S/2004/616). Our appreciation goes also to the British presidency of the Security Council for the timely manner in which he convened this second debate on that topic.

We agree with the report that a consensus is needed within the Organization on the definition of key concepts such as the rule of law or transitional justice. A proper orientation for the Organization's many efforts in essentially complex and unique processes depends on such a definition.

As the report suggests, we can understand that the rule of law implies a principle of governance according to which all persons, institutions and entities, public and private, are subject to laws, which must be compatible with international human rights norms and must guarantee accountability, including procedural transparency.

Today, the building or rebuilding of the structure of a civil society is in fact sustained by respect for international law. Also today, the law of inter-State relations — *ius gentium* — is at the service of the individual. The building of *civitas* is not limited to the establishment of peace; it must continue beyond the formal cessation of hostilities. In short, international law is an undeniable sign of civilization.

For its part, the notion of transitional justice — a relatively new concept in the international sphere — denotes above all a society's efforts to resolve the legal and institutional challenges arising from a change in regime, including, of course, the aspect of reparation for victims, leading ultimately to a reconciliation among the different national actors. Various societies face such situations as a result of internal conflicts, but also as a result of some profound change in their political organization. Such is the case in Iraq or the Sudan, where the clamour for justice represents a challenge for the societies in those countries, but also requires the assistance and support of the international community.

Mexico is not in a post-conflict situation. However, as a result of the change of administration, we are undergoing a transition towards a democracy that is daily growing in scope. In that connection, we believe that our experience — reflecting the conditions of an ongoing transition, but with the advantages inherent in a long period of stability and economic and social progress — can be shared with other societies.

The Mexican experience in building an institutional framework for electoral systems that inspire confidence in the electorate and confer legitimacy on the authorities to be elected has been and will remain available to the United Nations. We trust that we will soon see in my country the materialization of the United Nations electoral training centre project, which was announced during the Secretary-General's recent visit to Mexico.

Transitional justice has become a key element in the work of the Organization. In particular, it is increasingly present in the decisions of the Council. The action of the Security Council in addressing threats to international peace and security must entail the obligation to ensure a sufficient measure of stability and political and institutional reconstruction after a conflict. Without that component, the work of the Council is incomplete and weak, as we have seen in Haiti, for example. A few years later, the same episodes of violence and disruption of institutional life are repeated.

Justice, democracy and peace must be closely linked to ensure the stability and reconciliation of

societies. Undoubtedly, as recognized by the Secretary-General, the Organization already has a respectable number of experts in those areas, who can provide timely advice. Some countries in particular contribute or are in a position to provide valuable assistance on those matters at the bilateral level. However, post-conflict intervention efforts remain scattered in various areas within the Organization.

On that and other aspects of the report, I should like to make several observations.

First, my delegation believes that we must move forward towards a process of institutionalization and better coordination of United Nations interventions in post-conflict situations. In that connection, my delegation has received with interest the proposal of a number of countries aimed at creating a specialized unit within the Secretariat or a division within the Office of the High Commissioner for Human Rights.

Secondly, special tribunals of any kind are undoubtedly one of the Organization's boldest responses to the need to put an end to impunity and, at the same time, to punish those responsible for crimes that shock the social conscience. However, experience in this area, as indicated in the report, is ambivalent. Most assuredly, today we would not repeat many of the mistakes we made a decade ago, some of which Mexico noted at the time. On the one hand, special tribunals — as in the cases of the former Yugoslavia and Rwanda — represent an exorbitant cost, 15 per cent of the Organization's annual budget. In the case of the so-called hybrid or international tribunals — such as that for Sierra Leone, to which Mexico has contributed — voluntary contributions, as recognized in the report, have proved to be an uncertain source of financing. But, over and above those problems, Mexico reaffirms its conviction that, above all, it is up to the societies affected to initiate the establishment of such tribunals and, in any case, to rely on international advice, supervision and financing, depending on the circumstances. In some cases, regional or subregional organizations can and must supplement those tasks.

In that context, Mexico believes we must continue to promote the strengthening of the International Criminal Court. The Court must come to be seen, above all, as the mechanism which the international community has established to ensure that the most serious crimes of international importance do not go unpunished. As the Secretary-General indicated in his recent address to the General Assembly,

> "Those who seek to bestow legitimacy must themselves embody it; and those who invoke international law must themselves submit to it." (*A/59/PV.3, p. 3*)

In that connection, Mexico welcomes the firm commitment shown by the Secretary-General with regard to strengthening the foundations, within the Organization, of this renewed effort to promote the rule of law and transitional justice.

The President: I now call on the representative of Saint Vincent and the Grenadines.

Ms. Ferrari (Saint Vincent and the Grenadines): Saint Vincent and the Grenadines is pleased, Mr. President, that you have organized this open meeting, which gives countries like my own a rare opportunity to address the Council on an issue of vital importance to global accountability and governance.

We welcome the report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616). The report is balanced and thought-provoking; it highlights the crucial role of the United Nations in this troubling sector; and it is forthright in highlighting the Organization's successes as well as its failures.

There is no doubt that the ad hoc criminal tribunals established by the United Nations in post-conflict situations have helped in some measure to convey to the victims of criminal behaviour a sense that their persecutors will be made accountable for their crimes. The tribunals have gone a long way towards destroying the notion that perpetrators of serious crimes against humanity in any part of the world would enjoy impunity. The tribunals have also served up a rich diet of new jurisprudence which can only enhance and enrich the practice of international law.

It is troubling, however, that there is a public perception that the tribunals take a disproportionate amount of time to prosecute and bring finality and closure to criminal proceedings.

It is not for my delegation to speculate on the myriad causes of the apparently infinite agenda of the tribunals, but merely to say that the information given in the Secretary-General's report — that the two ad hoc

tribunals now have a combined annual budget exceeding $250 million, which is equivalent to more than 15 per cent of the United Nations total regular budget — must give us pause for thought. For even as we recognize the valuable contribution of the tribunals, we cannot help but ponder what $250 million could do for post-conflict development in the very same countries.

For the above and other reasons, we remain strong and determined supporters of the International Criminal Court. Our support has come with a heavy price attached, but we have never wavered in our commitment. As the Secretary-General notes,

> "domestic justice systems should be the first resort in pursuit of accountability. But where domestic authorities are unwilling or unable to prosecute violators at home, the role of the international community becomes crucial". (*S/2004/616, para. 40*)

We are pleased with the Secretary-General's endorsement of the Court and in particular his statement in the report that "the Court is already having an important impact by putting would-be violators on notice that impunity is not assured" (*ibid., para. 49*).

We recognize that the Court is not a panacea for all the ills of the world, nor will it be free of some of the same problems that have afflicted the ad hoc tribunals. But by our collective efforts we have managed to establish a permanent forum for prosecuting the most serious crimes of which mankind is capable.

According to the President of the Court, the Court is now ready to begin proceedings in its first cases, which could start at any time. This is indeed welcome news and we hope that the Court will translate words into actions in the very near future. Its credibility depends, in large measure, on whether it can prove its worth as a functioning institution. Let us hope that the lessons learned from the ad hoc tribunals will be heeded.

We conclude by echoing the call of the Secretary-General for all Member States of the United Nations that have not yet done so, to move towards the ratification of the Rome Statute at the earliest possible opportunity. We believe wholeheartedly, that if the Member States of the United Nations act as one in a multilateral capacity to tackle the heartbreaking aftermath of post-conflict situations with resolution and justice, mankind will be the ultimate beneficiary.

The President: The next speaker is the representative of Nigeria, to whom I give the floor.

Mr. Wali (Nigeria): I wish to congratulate you, Sir, on your assumption of the Presidency of the Security Council for the month of October and thank you for organizing the debate. I also take this opportunity to congratulate Spain on the able manner the affairs of the Council were conducted last month.

The topic for the debate today could not have been more timely and appropriate. The concept of justice and the rule of law is fundamental to human existence and the enjoyment of freedom, which we all cherish.

Nigeria believes that it was with this in mind that the third paragraph of the preamble to the Universal Declaration of Human Rights, adopted by the General Assembly on 10 December 1948, provides, among other things, that

> "whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law ...".

Article 7 provides, inter alia, that, "All are equal before the law and are entitled without any discrimination to equal protection of the law."

As a means of actualizing those fundamental rights, article 10 provides that,

> "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."

The Secretary General of the United Nations, Mr. Kofi Annan, in a report dated 13 April 1998 (S/1998/318), identified, among other reasons, "insufficient accountability of leaders, lack of transparency in regimes, inadequate checks and balances, non-adherence to the rule of law ... lack of respect for human rights," as causes of conflict in Africa. Nigeria notes with satisfaction that in responding to the complex conflict situations in Africa

the Security Council now decides on mandates that are multidisciplinary in nature.

Consequently, Nigeria welcomes the efforts of the United Nations in ensuring that peacekeeping missions are no longer limited to disarmament, demobilization and reintegration, but are expanded to include the strengthening of democratic governance, building the capacity of local institutions, reform of internal security systems as well as restoration of the rule of law and basic human rights.

Nigeria also welcomes that new approach because it allows the building of durable peace, which will facilitate sustainable development in countries emerging from conflict. The strategy is also more cost-effective because the causes of conflicts are addressed by encouraging, among other things, democratic pluralism, transparent and accountable governance, the rule of law and economic recovery. In that regard, it is gratifying to recall that such tenets of accountability, transparency and good governance have been adopted at the initiative of African leaders and Governments as an integral part of the New Partnership for Africa's Development (NEPAD).

It is therefore necessary for the United Nations and the international community to ensure that the implementation of the Millennium Development Goals go side by side with the entrenchment of justice and the rule of law, especially in countries emerging from conflicts.

Nigeria reaffirms its support for Security Council resolutions 808 (1993) and 955 (1994) establishing respectively, the International Tribunals in the former Yugoslavia and in Rwanda. Similarly, we reaffirm our support for the establishment of the Special Court for Sierra Leone. We believe that the work of the tribunals and the Special Court will bring justice to the victims of abuse of human rights and international humanitarian law.

We therefore appreciate and acknowledge the excellent but tedious work so far undertaken by the International Tribunals and the Special Court in their efforts to bring the perpetrators of heinous crimes against humanity to justice. In our view, the establishment of the tribunals is indicative of the collective rejection of impunity by the civilized world.

The establishment of the two International Tribunals and the Special Court is helpful, yet, regrettably, their ad hoc nature can hardly enhance their usefulness. Furthermore, the fact that the Special Court is funded through voluntary contributions has posed serious financial problems to the integrity of the Court. Nigeria, therefore, appreciates the agreement by the United Nations to come to the financial aid of the Court, and to bail it out of its financial predicament. We, therefore, call for the funding of the Court from the regular budget of the United Nations if the integrity and dignity of the Court are to be preserved.

Nigeria is of the view, and indeed is convinced, that the fight against impunity should be taken to its logical conclusion. It is therefore necessary to have a more permanent international judicial institution which would replace the two tribunals and the Special Court. Consequently, Nigeria believes that the establishment of the International Criminal Court at The Hague was envisioned to fulfil that purpose. It will be recalled that the Rome Statute which established the ICC came into force in July 2002. It is encouraging that 97 countries are so far parties to the Statute.

Nigeria wishes to urge those States that have not yet done so to become parties to the Statute in order to make the Court more universal, thereby giving greater acceptability and universality to the global fight against impunity. As noted by the Secretary-General, the Court is "already having an important impact by putting would-be violators on notice that impunity is not assured" (*S/2004/616, para. 49*). Nigeria therefore supports the statement by the Secretary-General in his report that domestic justice systems should be the first resort in pursuit of accountability.

Accordingly, Nigeria urges States parties to the Rome Statute to incorporate into their national laws the provisions of the Statute which are against impunity and crimes against international humanitarian law. Nigeria reaffirms its support for the Rome Statute, and acknowledges with approval the commendable role that non-governmental organizations are playing to ensure the effectiveness and independence of the International Criminal Court. The fact that there have already been some referrals from Member States to the ICC so soon after its establishment is evidence of the working of the complementary roles expected to be played by the Court and Member States in the fight against impunity and breaches of international humanitarian law.

Given the need to ensure justice and the rule of law, particularly in developing countries and countries

emerging from conflict, there is a need for the United Nations to increase its assistance to such countries. In this regard, we call on the United Nations to provide training for lawyers, prisons officials and prosecutors, as well as to organize seminars and workshops for lawyers, judges and others in those countries. There is also a need to assist such countries by providing additional funds for the education of the populace, especially at secondary- and high-school levels. It is Nigeria's view that an enlightened populace will readily protect and guard its rights and obligations.

The concept of justice, the rule of law and equity that obtains at the national level needs to be replicated at the global level. In this regard, it will be necessary for the United Nations and the international community to foster an international system that truly and genuinely upholds the principle of the equality of States, as envisioned by customary international law and the Charter. Accordingly, there is a need to ensure rule-based, open and transparent participation by all sovereign States in global collective decision-making. Nigeria therefore calls for the best to be made of the potentials and benefits of globalization as a potent force for all humanity. In our view, the present asymmetries in the architecture of the financial and international trading system accentuate divisions, marginalization, inequalities and unfairness. As a result, developing countries are at a disadvantage, as they lack the power and the voice to negotiate and make decisions on an equal footing with their development partners.

The President: The next speaker is the representative of Indonesia, to whom I give the floor.

Mr. Jenie (Indonesia): It is a pleasure for me to be here in the Security Council today to make a contribution to the Council's consideration of the agenda item, "Justice and the rule of law: the United Nations role". Before I go any further, however, I would like to congratulate you, Sir, on your assumption of the presidency of the Security Council for this month of October, and to pledge the full support of the delegation of Indonesia.

My delegation takes note of the report of the Secretary-General on this subject (S/2004/616). None of us could disagree that justice and the rule of law are vital elements for the functioning of States. They are important for creating stability, peace and democracy, and their establishment is an essential element, not only in peacekeeping operations or transitional societies, but in all societies. Justice and the rule of law are important to every human being.

Indonesia believes that, in providing support for the rebuilding of justice and the rule of law in a transitional society, we in the international community must begin with the recognition of differences in the national context. If a peacekeeping mission is to succeed, its actions, based on justice and rule of law, must relate to, and be grounded in, the national situation. As the Secretary-General has aptly put it, the role of the United Nations and the international community should be solidarity, not substitution. As he also said in his report, we must be careful to avoid importing foreign models that may not be of any help to the local situation.

The international community and the United Nations need to redouble their efforts to assist Member States in fulfilling the objectives of justice and the rule of law. That should be done in cooperation with Member States, with the United Nations identifying those areas in which it can render support. For example, the United Nations can play a more active role in enhancing a general awareness and understanding of internationally agreed principles that are essential to the realization of justice and the rule of law. Such an initiative can be realized by, inter alia, making information widely available to legal practitioners responsible for justice and the rule of law.

The United Nations can further assist by providing training in Member States to legal personnel who are fulfilling their responsibilities in the area of justice and the rule of law. Whatever initiatives are taken by the United Nations, it is important to bear in mind that the objective is to strengthen, not undermine, the national legal process.

In this connection, my delegation believes that any proposals for strengthening United Nations support for transitional justice and the rule of law in any society must be made with a view to promoting and abiding by the principles enshrined in the United Nations Charter and international law.

Some legal scholars have drawn attention to the variety of legal mechanisms available today for addressing this subject. Another important process, as recognized in the report, is the use of truth and reconciliation commissions, an instrument that has been helpful to the recovery process in some post-

conflict societies. Although it is not a substitute for the judicial process, we should not underestimate its contributions.

While the Secretary-General is eloquent in his analysis and recommendations, he indicates in his report that he will be instructing the Executive Committee on Peace and Security with regard to a proposal for further action on the issues he has identified. In our view, the issues involved here might require a higher level of executive attention than that Committee can provide. Caution must be exercised, however, so that any such new structure is in line with the reform process of the Organization and does not impose an unnecessary burden on its programme budget.

The President: There are no other speakers inscribed on my list. We have come to the end of a debate that has seen 45 contributions: that in itself demonstrates the importance of this subject. We have had a very rich debate. It has given us lots of food for thought. The Secretary-General's report has been roundly welcomed in those contributions. The challenge now, very clearly, is to convert what some feared might be an abstract concept and change it into something which is implemented before conflict, after conflict and at all stages. But it applies to all countries and indeed, should be done in solidarity with countries and not imposed as one arrangement for everybody.

After consultations among members of the Security Council, I have been authorized to make the following statement on behalf of the Council:

> "The Security Council thanks the Secretary-General for his report dated 3 August 2004, which was reissued on 23 August 2004 (S/2004/616), and reaffirms the vital importance that the Council attaches to promoting justice and the rule of law, and post-conflict national reconciliation. The Council will consider, as appropriate in its deliberations, the recommendations set out in paragraph 64 of the report.
>
> "The Security Council urges the Secretariat of the United Nations to take make proposals for implementation of the recommendations set out in paragraph 65 of the report, and draws attention in particular to the importance of the practical measures set out in that paragraph that can be implemented rapidly, including coordination of existing expertise and resources, setting up databases and web-based resources and developing rosters of experts, workshops and training. The Council urges Member States which are interested in doing so to contribute national expertise and materials to these developments within their means, and to improve their capacities in these areas.
>
> "The Security Council recalls the important statement made by the Secretary-General to the General Assembly, at its fifty-ninth session, on 21 September 2004 and endorses his view that, 'It is by reintroducing the rule of law, and confidence in its impartial application, that we can hope to resuscitate societies shattered by conflict.' The Council stresses the importance and urgency of the restoration of justice and the rule of law in post-conflict societies, not only to come to terms with past abuses, but also to promote national reconciliation and to help prevent a return to conflict in the future. The Council emphasizes that such processes must be inclusive, gender-sensitive and open to the full participation of women.
>
> "The Security Council underlines the importance of assessing the particular justice and rule of law needs in each host country, taking into consideration the nature of the country's legal system, traditions and institutions, and of avoiding a 'one size fits all' approach. The Council recognizes that building national capacities and independent national institutions is essential, that local ownership and leadership in that process should be encouraged and respected, and that international structures can play a complementary and supportive role.
>
> "The Security Council emphasizes that ending the climate of impunity is essential in a conflict and post-conflict society's efforts to come to terms with past abuses, and in preventing future abuses. The Council draws attention to the full range of transitional justice mechanisms that should be considered, including national, international and 'mixed' criminal tribunals and truth and reconciliation commissions, and underlines that those mechanisms should concentrate not only on individual responsibility for serious crimes, but also on the need to seek peace, truth and national reconciliation. The

Council welcomes the report's balanced appraisal of the lessons to be learned from the experience of the ad hoc international criminal tribunals and 'mixed' tribunals.

"The Security Council recalls that justice and rule of law at the international level are of key importance for promoting and maintaining peace, stability and development in the world. The Council underlines also the importance of helping to prevent future conflicts through addressing their root causes in a legitimate and fair manner.

"The Security Council warmly welcomes the Secretary-General's decision to make the work of the United Nations to strengthen the rule of law and transitional justice in conflict and post-conflict societies a priority for the remainder of his tenure. The Council invites the Secretary-General to keep it informed on the Secretariat's progress in taking forward the recommendations set out in paragraph 65 of the report and expresses the intention to consider this matter again within six months."

This statement will be issued as a document of the Security Council under the symbol S/PRST/2004/34.

The Security Council has thus concluded the present stage of its consideration of the item on its agenda. I thank again all the participants for their contributions and for the quality of the discussion of this very important and topical subject.

The meeting rose at 6.45 p.m.

United Nations S/PV.5053

Security Council

Fifty-ninth year

Provisional

5053rd meeting

Friday, 8 October 2004, 10 a.m.

New York

President:	Sir Emyr Jones Parry	(United Kingdom)
Members:	Algeria	Mr. Baali
	Angola	Mr. Gaspar Martins
	Benin	Mr. Zinsou
	Brazil	Mr. Sardenberg
	Chile	Mr. Maquieira
	China	Mr. Zhang Yishan
	France	Mr. De La Sablière
	Germany	Mr. Pleuger
	Pakistan	Mr. Akram
	Philippines	Mr. Mercado
	Romania	Mr. Motoc
	Russian Federation	Mr. Denisov
	Spain	Mr. Yáñez-Barnuevo
	United States of America	Mr. Danforth

Agenda

Threats to international peace and security caused by terrorist acts

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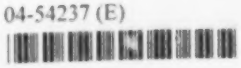
04-54237 (E)



The meeting was called to order at noon.

Adoption of the agenda

The agenda was adopted.

Threats to international peace and security caused by terrorist acts

The President: I should like to inform the Council that I have received a letter from the representative of Turkey, in which he requests to be invited to participate in the discussion of the item on the Council's agenda. In conformity with the usual practice, I propose, with the consent of the Council, to invite that representative to participate in the discussion, without the right to vote, in accordance with the relevant provisions of the Charter and rule 37 of the Council's provisional rules of procedure.

There being no objection, it is so decided.

At the invitation of the President, Mr. Pamir (Turkey) took a seat at the Council table.

The President: I welcome the presence among us of the Secretary-General, Mr. Kofi Annan.

The Security Council will now begin its consideration of the item on its agenda. The Security Council is meeting in accordance with the understanding reached in its prior consultations and the agreement that the representative of Turkey should have the opportunity to address the Council.

Members of the Council have before them document S/2004/792, which contains the text of a draft resolution submitted by France, Germany, Romania, the Russian Federation, China, Spain, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

I shall now give the floor to the representative of Turkey.

Mr. Pamir (Turkey): I have the honour to speak on behalf of the member States of the Organization of the Islamic Conference. I would like to congratulate you, Sir, on assuming the presidency of the Security Council for this month. I would also like to thank you for organizing this meeting, which gives us an opportunity to express our views on this important issue.

At the outset, I also express our profound sympathy and heartfelt condolences to the families of the victims of the latest, heinous attack that took place in Taba and condemn the perpetrators in the strongest terms.

As you very well know, Sir, we had serious misgivings with regard to the language used in the text of the previous draft resolution, which raised a number of important questions, especially insofar as resistance to foreign occupation and alien domination are concerned.

Following intense consultations with the members of the Council, particularly the initiator country and the co-sponsors of the draft resolution, I am happy to say that we now have in hand a draft resolution that enjoys much wider support from the international community.

The Organization of the Islamic Conference (OIC) gives thanks for the foresight, the care and the spirit of cooperation and mutual understanding that has governed the latest exchange of views.

Indeed, the OIC would like to avail itself of this opportunity to strongly condemn once again all acts and practices of terrorism. We remain convinced that terrorism, irrespective of its motivations, objectives, forms and manifestations, can never be justified. We realize that terrorism requires a coordinated response from the international community and that the quest to eradicate terrorism requires a sustained, comprehensive approach involving the active participation and collaboration of all Member States of the United Nations, to be pursued in accordance with the Charter of the United Nations and international law.

The draft resolution before the Council will strengthen and consolidate that determination, which today is finding a new echo in the international community.

The President: It is my understanding that the Council is now ready to proceed to the vote on the draft resolution (S/2004/792). Unless I hear any objection, I shall put the draft resolution to the vote now.

There being no objection, it is so decided.

A vote was taken by show of hands.

In favour:

Algeria, Angola, Benin, Brazil, Chile, China, France, Germany, Pakistan, Philippines, Romania, Russian Federation, Spain, United Kingdom of Great Britain and Northern Ireland, United States of America

The President: There were 15 votes in favour. The draft resolution has been adopted unanimously as resolution 1566 (2004).

I shall now give the floor to those members of the Council who wish to make statements following the voting.

Mr. Denisov (Russian Federation) (spoke in Russian): Just now, the Security Council adopted by consensus a resolution on additional steps to be taken to combat terrorism. We are convinced that these are necessary and timely steps in the right direction, required by the need for joint efforts by the international community to combat the terrorist threat. The unprecedented escalation of international terrorism, of which there has been further confirmation in recent days in Pakistan, Egypt and today in France, in addition to the killings of hostages, the recent tragedy in the Russian city of Beslan and other acts, points to the need for the Security Council to take more decisive action with a view to further developing a global anti-terrorist strategy, as defined in Security Council resolution 1373 (2001).

The current resolution is not just an expression of anti-terrorist solidarity. It sets out concrete steps to strengthen mechanisms for security and to improve legal instruments with a view to enhancing coordination of international counter-terrorism actions.

The major emphasis in the resolution is that terrorist acts are crimes that can be justified by no political, ideological, religious or other views of any nature and that the perpetrators of terrorist acts should receive the harshest possible punishment for their crimes. We proceed from the practical need to improve the legal and operational instruments to combat terrorism and terrorist organizations, which are highly skilled at adapting their structure and tactics to changing circumstances.

We realize that there is a problem with respect to identifying additional anti-terrorist measures. The task of solving that problem has been entrusted to a working group of the Security Council to be established pursuant to the resolution we have just adopted. It will have to discuss the practical effectiveness and coordination of various approaches. We firmly believe that one priority task of the working group must be the search for ways and means to identify terrorists, including the possible drafting of a relevant list whereby they may subsequently be brought to justice.

As I have said, the drafting of appropriate procedures will be complex politically and legislatively. That does not mean, however, that we should not address such issues. We hope that the working group will help us to bring our positions into line with one another and to propose new approaches to the solution of the task. We believe that today's resolution will give a qualitative new impulse to the Counter-Terrorism Committee and to the Counter-Terrorism Executive Directorate and that it will alter and expand the range of activities to stem the activities of terrorists and their accomplices worldwide.

We are convinced that resolution 1566 (2004) further strengthens the central coordinating role of the United Nations in the international campaign against the terrorist threat. I wish to thank all my colleagues in the Security Council, first and foremost the sponsors of the resolution, for their active participation in its preparation and adoption.

Mr. Baali (Algeria) (*spoke in French*): Algeria welcomes the Security Council's unanimous adoption of a resolution vigorously condemning all acts of terrorism in all their forms, thus significantly enhancing our campaign against a phenomenon that constitutes one of the greatest threats to international peace and security today.

We welcome the resolution, first, because it has created at just the right time the possibility of extending to other terrorist individuals and groups measures imposed hitherto only on individuals and groups affiliated with Al Qaeda, thereby responding to a long-standing request of my country.

We also welcome the resolution because it addresses yet another persistent concern of my country: the need forcefully to strengthen judicial cooperation in combating terrorism, particularly with respect to prosecution and extradition, which the resolution enshrines as a fundamental principle.

Finally, we welcome the resolution because it avoids any conflation of acts of terrorism and the legitimate rights of peoples to resist foreign occupation. That principle is dear to Algeria and has been fully enshrined in international law and United Nations resolutions.

Mr. Akram (Pakistan): Over the past 25 years, Pakistan has been a principal victim of terrorism. We have therefore been in the forefront of the global campaign against terrorism. Periodically confronted by terrorist attacks against innocent people in our cities — including yesterday in Multan — my Government is steadfastly committed to achieving success in the war on terrorism.

We believe that the resolution that has been adopted unanimously today will strengthen international cooperation, beyond our cooperation against Al Qaeda and the Taliban, to other sources of international terrorism. Operative paragraph 3 of the resolution enumerates a number of criminal acts that constitute offences within the scope of and as defined in international conventions and protocols relating to terrorism.

We participated constructively in the negotiations on the resolution. We are grateful to the Russian Federation and other sponsors for their flexibility in addressing some of the concerns we had with regard to specific aspects and language in the resolution. We believe that the resolution reaffirms the imperative to combat terrorism in all its forms and manifestations, in accordance with the Charter of the United Nations and international law.

We attach particular importance to the ninth preambular paragraph of the resolution, which emphasizes that

> "enhancing dialogue and broadening the understanding among civilizations, in an effort to prevent the indiscriminate targeting of different religions and cultures, and addressing unresolved regional conflicts and the full range of global issues, including development issues, will contribute to international cooperation, which by itself is necessary to sustain the broadest possible fight against terrorism". (*resolution 1566 (2004)*)

Finally, I would like to reiterate the need for a comprehensive strategy to address terrorism. In that context, President Musharraf of Pakistan stated in the General Assembly last month that

> "The immediate anti-terrorist response has to be accompanied by a clear long-term strategy that strikes at the root of the problem if we are to ensure final success against this scourge". (*A/59/PV.5*)

Mr. Yáñez-Barnuevo (Spain) (*spoke in Spanish*): Spain is gratified by the unanimous adoption of resolution 1566 (2004), of which, with other members of the Council, it was a sponsor. We believe that the resolution contributes significantly to endowing the United Nations and the international community as a whole with a set of practical and effective tools to combat terrorism. Terrorism remains a threat to us all, as we have seen, tragically, in the past few hours in different parts of the world.

Our work over the past two weeks since the Russian Federation introduced its initial draft resolution has been intense, but we are convinced that, as a result of everyone's efforts, we have managed to reflect the broad consensus that exists not only within the Council, but also among all the States Members of the United Nations.

We also wish to highlight the very important statement made at the beginning of the meeting this morning by the representative of Turkey on behalf of the Organization of the Islamic Conference. We all agree to stress our unequivocal condemnation of terrorism from any quarter, for which there can never be any justification whatsoever. At the same time, the preambular part of the resolution also reflects the need for improved dialogue and broader understanding among civilizations. In that context, I cannot fail to refer to what the President of the Spanish Government said at the 4th plenary meeting of the General Assembly, on 21 September, when he offered the idea of establishing an alliance of civilizations to combat terrorism, extremism and pointless violence.

The resolution we have just adopted illustrates the fact that one of the priorities of the Security Council and the United Nations as a whole continues to be the fight against terrorism, which we agree is one of the most serious threats to world peace and security. At the same time, we wish to emphasize that in combating terrorism it is essential to always adhere to the norms of international law, especially with regard to humanitarian, refugee and human rights law.

The resolution strengthens the Security Council's commitment to developing effective tools to combat terrorism by emphasizing the essential role being played in that regard by the Security Council's Counter-Terrorism Committee and, in particular, the Committee's recently established Executive Directorate.

Similarly, we view favourably the establishment of an ad hoc Security Council working group to consider concrete measures to further promote the international struggle against terrorism. Among other things, that should include looking into the most appropriate and effective ways and means to identify individuals, groups and entities involved in, or associated with, terrorist activities. We believe that the most appropriate way to do that would be to establish a list of such entities and persons. We know that there could still be difficulties and complications in drawing up such a list. It is true that there are many issues and details that will have to be dealt with, but we are fully confident that the working group will know how to address them both seriously and effectively.

We also cannot forget another key aspect of the resolution: that it reflects concern for the victims of terrorism through a provision calling for the working group to consider the possibility of establishing an international fund to compensate victims and families. We believe we are sending out a very positive message by raising the possibility that assets seized from terrorists or terrorist groups could be used to compensate the victims of terrorist acts and their families — bearing in mind that the ultimate decision to do so will lie with the authorities of the State that has confiscated the assets.

In conclusion, the resolution we have just adopted is good news for everyone, as it enables us to continue to move towards the common goal of eradicating the plague of terrorism with growing resolve and perseverance until such time as the international community prevails over intolerant and violent extremists.

Mr. Maquieira (Chile) (*spoke in Spanish*): We are grateful to the sponsors for having introduced the draft resolution that has just been adopted by consensus at this meeting. We are also extremely grateful for the flexibility shown throughout a negotiating process that was not always easy.

My delegation voted in favour of the resolution, thereby joining a new consensus in the search for ways to enable the international community to strengthen the fight against terrorism and to increase the effectiveness of the efforts of States to prevent, restrict and limit the actions of individuals, groups and entities linked to terrorist activities and, when that is not possible, to find ways to bring those individuals and entities to justice. In that way, the resolution contributes to improving the Security Council's work in this complex area.

My country has continuously demonstrated its commitment to fighting terrorism. This year we have also supported the Security Council's efforts to combat terrorism by voting in favour of resolutions 1526 (2004), 1535 (2004) and 1540 (2004). Henceforth, and in keeping with the text we have just adopted, the international community will have at its disposal a working group consisting of all members of the Council, whose task will be to consider and submit new measures to combat terrorism. Those measures will have to be proposed and analysed with due account for respect for international law and international humanitarian law, which the measures will have to reflect and incorporate.

We would like to emphasize that the resolution refers to the imperative to combat terrorism in all its forms and manifestations; the Council's concern with the increasing number of victims, including children, caused by acts of terrorism; the call to cooperate with the Committees established pursuant to resolutions 1373 (2001), 1267 (1999) and 1540 (2004), which, although they act in coordination, have different mandates; and the call to adopt measures to combat terrorism in accordance with international law in particular, human rights, refugee and humanitarian law.

Finally, we very much appreciate the solidarity with the victims of terrorism that is reflected both in the preambular part of the resolution and in the operative part, which requests consideration with respect to establishing a fund to compensate victims of terrorism. Innocent victims are the ones most affected, and they are the ones to whom we should extend our greatest solidarity and support.

Mr. Motoc (Romania): I wish to begin by commending the delegation of the Russian Federation for the timely initiative that is now embodied in the

resolution that the Council has just adopted, namely, resolution 1566 (2004).

Romania shared in the shock and horror experienced by the Russian Government and people in the face of the latest terrorist attacks on their territory. We supported the wider motives that prompted the Security Council to adopt this resolution. Indeed, terrorist acts are proliferating and are growing in both number and horror; countries and regions affected are increasingly diverse, as we have, unfortunately, recently witnessed in Asia, Europe and the Middle East. The international response and the multilateral reaction to this mounting threat should be characterized by stronger and better-articulated norms, procedures and mechanisms, including, in particular, at the level of the United Nations.

In the course of consultations on the resolution just adopted, all Council Members offered analysis, ideas and proposals with a view to making the most out of this important pronouncement of the Security Council. The outcome of those extensive consultations is a good text and a good basis for future hard work within the United Nations, the Security Council and the Committees established pursuant to resolutions 1267 (1999), 1373 (2001) and 1540 (2004), within the framework of the regimes they have set up.

These were important reasons for Romania to co-sponsor the draft resolution and to support the unanimous adoption of resolution 1566 (2004) this morning.

I would like to take a moment to acknowledge contributions made from outside the Council. In that regard, we appreciate the very constructive and forthright statement we just heard delivered here by the Ambassador of Turkey, speaking on behalf of the Organization of the Islamic Conference.

A lot of hard work lies ahead of us. As terrorism evolves, so should our response. Romania looks forward to supporting the working group of the Security Council in the expeditious and responsible discharge of the broad mandate entrusted to it in operative paragraph 9 of the resolution. There is strong political will in the Council for the working group to identify the most appropriate ways and means of more effectively combating terrorism, including by making appropriate recommendations for the development of an adequate list of individuals and entities involved in or associated with terrorism beyond those already dealt with by the 1267 Committee. Romania is assuredly a part of that political will.

Mr. Pleuger (Germany): Germany welcomes the adoption of today's resolution by consensus. It will be a major contribution to strengthening the global fight against international terrorism. This resolution comes at a particularly appropriate time when, after serious and particularly atrocious terrorist attacks in several parts of the world, the resolve and unity of the international community have been challenged anew.

Against this background, it is very important that the resolution found the support of all Security Council members. For Germany, maintaining consensus in fighting international terrorism is of great value and is obviously in the interest of all United Nations Member States.

In this respect, Germany attaches particular importance to an open and inclusive process in the implementation of the resolution, in particular in the working group foreseen in the resolution itself. The working group should, among other things, consider appropriate ways and means of operation, including the possibility of compiling a list for identifying relevant individuals, groups and entities.

Finally, I would also like to welcome the very constructive contribution made by the representative of Turkey, but let me also say that, in the interest of transparency, we would have favoured a public debate open to all United Nations Members before the adoption of the resolution.

Mr. Danforth (United States): Here is the state of the world today. Early last month, masked gunmen seized a school in Beslan, Russia. They forced over 1,000 children and their teachers into a sweltering gymnasium, with virtually no food or water. They wired the gym with explosives. They terrorized the children, shooting those who disobeyed them. After 52 hours, the terrorists detonated explosives. They shot children in the back who tried to run away. In a ruthlessly executed operation, the terrorists murdered more than 300 people, most of whom were children.

On 30 September, in Baghdad, children gathered near a ceremony marking the opening of a water treatment plant. They were bunched together to get candy soldiers were handing out. Seeing them bunched together, terrorists drove two explosive-laden cars into the midst of the children, detonated the cars and

deliberately murdered 34 children and 7 adults; 130 other civilians, many of them children, were injured.

On 1 October in Pakistan, a bombing at a Shi'ite mosque killed dozens of worshippers. Just yesterday, three terrorist bombs exploded at resorts in Egypt, killing at least 35 people, injuring 100. These people were on vacation. Workers are still pulling them out of the rubble as I speak here today.

In each case, the terrorists believed that they were acting in the service of a cause. These were not random acts of violence; they were cause-driven acts of violence. Some say that such murders of children are justified by "root causes". Supporters of the murder of civilians sometimes say that these are justifiable acts of national liberation or of self-determination. Some claim that exploding bombs in the midst of children is in the service of God. That is the ultimate blasphemy.

The most significant paragraph in the resolution before us is operative paragraph 3. It states quite clearly that acts that intentionally target civilians for death or serious bodily injury are criminal and never justifiable. It calls for States to punish those who target civilians. We do this through our courts or pursuant to extradition treaties.

The resolution states that these acts of terror are never justifiable — not by political, or philosophical, or ideological, or racial, or ethnic or religious reasons.

We emphasize that, in addition to the acts proscribed in paragraph 3, there are other acts, also terrorist acts, that cannot be justified by political, philosophical, ideological, racial, ethnic, religious or similar considerations. Nothing in operative paragraph 3 should be construed as creating any implication to the contrary. For example, there are terrorist acts covered by the existing terrorism conventions, for which an element of intent is not required.

Let me emphasize the precise issue we decided by our vote, because for some there is an alternative to the principle set forth in this resolution. The alternative position is that, while the deliberate massacre of innocents might often not be justifiable, sometimes it is. The alternative position is that some "root causes" may from time to time justify terrorists in detonating bombs in crowds of children. The alternative position to the resolution before us is to say that circumstances may be sufficient to justify such terrorism. Such justification, the theory goes, might include self-determination, national liberation or one's own perception of the will of God. The resolution which we have adopted states very simply that the deliberate massacre of innocents is never justifiable in any cause — never.

Either terrorism is never justifiable, or it is sometimes justifiable. Either the massacre of innocents always deserves punishment, or it is sometimes absolved from punishment. Believing that the murder of civilians can never be justified, we also agree that the working group should consider the possibility of drawing up a comprehensive list of terrorists.

I congratulate the Russian Federation for putting this fundamental question of principle so squarely before the Council. We have decided this question by our unanimous vote.

Mr. Sardenberg (Brazil): Brazil participated in the consensus on the adoption of resolution 1566 (2004), in view of our firm commitment to counter terrorism in all its forms and manifestations, without any qualification whatsoever.

In our view, operative paragraph 3 of resolution 1566 (2004) reflects compromise language that contains a clear political message, but it is not an attempt to define the concept of terrorism.

I wish to reiterate our view that the current practice of the Council is one of excessive resort to the use of Chapter VII. In that regard, the fact that the entire operative part of the resolution just adopted remains under that chapter suggests that not enough emphasis has been given to the possibilities opened up by international cooperative action. We believe that such a tendency is both unnecessary and counterproductive. It is a matter of specific concern that the appeal to Member States contained in operative paragraph 5 is made under Chapter VII.

During our negotiations, I noticed that this point was raised by several other delegations. In our view, no constraints should be imposed on States' freedom to negotiate the terms of international conventions.

Brazil supports the establishment of the intergovernmental working group to consider political measures regarding individuals, groups or entities involved in or associated with terrorist activities, as foreseen in operative paragraph 9. It is our view that the need to observe the provisions of international law

and due process should be taken into due account by the working group.

Mr. Mercado (Philippines): My delegation voted in favour of resolution 1566 (2004) because we believe that this resolution will make a positive contribution to the resolve of the Council to fight against the menace of terrorism. The terrorist bombing that took place in Egypt yesterday underscores the importance of today's action by the Council. We condemn that terrorist bombing and extend our deepest sympathy to the relatives of the victims.

We are gratified that the Council achieved unity in the adoption of resolution 1566 (2004), which reaffirms the belief of every member of the Council that criminal attacks against civilians are never justified, for any reason. This resolution in no way overturns the right to self-determination under the Charter. Likewise, legitimate acts against foreign occupation and alien domination are not thwarted in the least by the Council's adoption of this resolution.

My delegation looks forward to participating actively in the work of the working group that will discuss and make recommendations on practical measures to be imposed on individuals, groups or entities involved in terrorism.

Mr. Zhang Yishan (China) (*spoke in Chinese*): At the outset, I should like to express our shock at the terrorist bombings in Egypt and in Pakistan, and we convey our sympathy to the families of the victims. We condemn these acts of terrorism.

Terrorism is the common enemy of humankind. All forms of terrorism, no matter when or where they occur and whatever their motivation, should be combated with determination. The international fight against terrorism should be consistent with the principles and purposes of the Charter of the United Nations and the underlying norms and principles of international law. It should address both the symptoms and root causes of the phenomenon while avoiding the use of double standards. That has always been our clear and consistent position.

There has been a recent spate of terrorist attacks throughout the world. While the Security Council was discussing the draft resolution on counter-terrorism, resolution 1566 (2004), terrorism's reach extended to Egypt and Pakistan. This is a flagrant challenge posed by terrorists to the entire international community, and it makes it clear that the fight against terrorism will be a long and arduous one. The international community must send a strong political signal in the context of the combat against terrorism and improve the relevant counter-terrorism measures in accordance with changing circumstances.

China co-sponsored the resolution that has just been adopted unanimously. The Chinese delegation thanks the Russian Federation for having played a leading role in drafting that resolution, and we would like also to thank other Member States for their united and consistent efforts.

China supports the leading role played by the United Nations in the international fight against terrorism. The unanimous adoption of this resolution is a clear expression of our unity and a strong response to the challenge posed by terrorism.

Mr. Zinsou (Benin) (*spoke in French*): My delegation welcomes the unanimous adoption of resolution 1566 (2004). Terrorism is one of the greatest scourges facing humankind today. It represents a grave violation of human rights and deeply shocks the human conscience. That is why we must be resolute in our struggle to eliminate it.

We express our deepest condolences to the families of the victims of recent attacks, which we firmly condemn.

As terrorism is a global problem, the fight we have undertaken to eliminate it requires ongoing mobilization and sustained cooperation among all Member States. We therefore welcome the commitment reiterated by the Council to a dialogue among civilizations and to the resolution of regional conflicts and development problems as a means of strengthening the combat against terrorism.

We therefore had no difficulty in associating ourselves with an initiative designed to do away with any justification of indiscriminate acts of terror against civilians, because my delegation believes that the protection of civilians in conflict situations is the very expression of the sacred principle of humanity.

Nevertheless, I must state here that the combat against terrorism should be waged on the basis of strict respect for the fundamental principles enshrined in the Charter. My delegation is therefore of the view that none of the provisions of the resolution which has just been adopted should be interpreted in such a manner as

to violate the principles of the Charter of the United Nations.

In that connection, paragraph 2 of Article 24 of the Charter states that:

> "In discharging these duties the Security Council shall act in accordance with the purposes and principles of the United Nations."

It is in that spirit that we urge Member States to implement, in strict respect of the Charter, measures adopted pursuant to the relevant resolutions of the Security Council. Only in that way can they retain their legitimacy under international law and international humanitarian law.

My country welcomes the idea of setting up an international fund to compensate victims of terrorism and their kin. The principles underlying the creation of such a fund are a sense of responsibility and an obligation of active solidarity towards its victims.

In conclusion, my delegation would like to thank the sponsors of the resolution.

Mr. Gaspar Martins (Angola): Angola has voted in favour of resolution 1556 (2004) and we did so with a sense of having accomplished a duty.

Terrorism is a common threat to peace and security and a common challenge to the international community as a whole. Therefore it is only logical that the Council has unanimously voted for this resolution, which constitutes an important landmark in the fight against terrorism.

Over the past 25 years, Angola has been the victim of terrorist acts. We can therefore understand the importance of standing united in the fight against terrorism, regardless of who the terrorists are or what their political, philosophical, ideological, religious or other motivations may be. The victims of terrorism deserve our solidarity, particularly as they are usually civilians and, quite often, children.

The resolution we have just adopted is good news and we thank the sponsors, particularly the Russian Federation, for the constructive approach they demonstrated throughout the long negotiations. We have a good instrument and now it is up to all States to put it to work to strengthen cooperation in the global fight in which we are all involved.

Mr. De La Sablière (France) (spoke in French): France was a sponsor of the draft resolution on the fight against terrorism that we have just adopted. We are grateful to the Russian Federation for having taken the initiative on that resolution, which will strengthen international cooperation to combat terrorism. We were gratified to see that this important text was adopted by consensus.

The resolution is important for several reasons. It energetically affirms that terrorist acts are unjustifiable, it calls upon all States to prevent such acts and to make sure that there are punishments consistent with their gravity, it reiterates that combating terrorism is an activity that must be carried out in accordance with international law, in particular, international human rights and humanitarian law, it calls upon the Counter-Terrorism Committee (CTC) to strengthen its activities, including visits to States, which will make it possible to enhance dialogue, and it calls upon the CTC Executive Directorate to endow itself with all the necessary means to support the CTC, and it tasks a specific Security Council working group to think of new ways to strengthen anti-terrorist efforts.

We hope the working group will discharge its mandate without haste, and in a careful, reflective manner. The questions it will have to tackle are complex ones. It will have to think about how it can further strengthen the activities of the CTC. It will have to examine the possibility of establishing a list of individuals, groups and entities of a terrorist nature. In so doing, it will have to learn from the lessons of the Al Qaeda sanctions Committee. The credibility of our activities, and therefore there effectiveness, depends on that. It is indispensable that the international community act in a unanimous manner in this area and France, for one, will be an active contributor.

The President: I shall now make a statement in my capacity as the representative of the United Kingdom.

Today we have had confirmation of the barbaric murder of Mr. Kenneth Bigley, a British national held hostage in Baghdad. We extend our most sincere sympathy to Mr. Bigley's family at this time of great sadness. Tragically, many countries and families are dealing with the suffering and the grief caused by mindless acts of violence — the violence of terrorists. Last night, in Sinai, we witnessed cruel and unjustified terrorist acts committed against civilians — acts that

served no conceivable purpose. Last week, in Pakistan, innocent civilians were once again the target of appalling terrorist acts.

When the Security Council began negotiation on this resolution, the appalling tragedy in Beslan, as well as the series of other recent attacks in Russia, were on our minds. The threat of terrorism touches us all and that is why this resolution matters. The adoption of resolution 1566 (2004) underlines the importance of the work of the Council, the work it is already doing through its Counter-Terrorism Committee (CTC), its Committee on sanctions against Al Qaeda and the Taliban and their respective expert teams. Some six months ago, we approved a new CTC Executive Directorate and it is important that it now be fully operational as soon as possible. But the resolution, rightly, goes further. It sets the scene for the Council to address the wider threat, and it is the first time that the Council will consider how to take practical action against terrorists not related to Al Qaeda and who are therefore not included under the existing sanctions regimes.

Of course, there are some difficult balances to be struck as this work goes forward. One of the most important of those was raised by Jack Straw in the General Assembly last month: the threat of terrorism confronts democratic States with an acute dilemma — to fight those who recognize none of the values for which we stand, while remaining true ourselves to those values. Counter-terrorism must be conducted in accordance with international law, including human rights and refugee law.

For example, the Council has declared that acts, methods and practices of terrorism are contrary to the purposes and principles of the United Nations, as are knowingly financing, planning or inciting terrorist acts. The 1951 Convention relating to the Status of Refugees itself sets out that it does not apply to anyone who has committed a war crime, a crime against humanity or other serious crime or who is guilty of acts contrary to the purposes and principles of the United Nations. We cannot allow those who commit, support and finance terrorism to shelter behind the refugee status to which they are not entitled and we should look at ways to ensure the speedier extradition of such individuals.

The Security Council is shouldering its responsibilities to tackle a threat that affects us all. These are challenging issues and ones which the working group will now have to tackle. The issues will require careful consideration and one of the first things on the agenda will be consideration of a terrorist list. We look forward to engaging in that work.

Finally, by adopting this important text by consensus, supported by the strong statement of the representative of Turkey, we are demonstrating the strength of the Council, the determination of the United Nations and the collective will to combat the scourge of terrorism.

I shall now resume my functions as President of the Security Council.

The Security Council has thus concluded the present stage of its consideration of the item on its agenda.

The Council will remain seized of the matter.

The meeting rose at 1 p.m.

United Nations S/PV.5054

Security Council

Distr.: General
8 October 2004

Original: English

Official communiqué of the 5054th (closed) meeting of the Security Council

Held in private at Headquarters, New York, on Friday, 8 October 2004, at 3 p.m.

In accordance with rule 55 of the provisional rules of procedure of the Security Council, the following communiqué was issued through the Secretary-General in place of a verbatim record:

"On 8 October 2004, the Security Council, pursuant to annex II, sections A and B of resolution 1353 (2001), held its 5054th meeting in private with the troop-contributing countries to the United Nations Peacekeeping Force in Cyprus (UNFICYP).

"The Security Council and the troop-contributing countries heard a briefing under rule 39 of its provisional rules of procedure by Mr. Zbigniew Wlosowicz, Acting Special Representative of the Secretary-General for Cyprus and Chief of Mission.

"Members of the Council, Mr. Wlosowicz and representatives of participating troop-contributing countries had a constructive exchange of views."

04-54307 (E) 081004

United Nations S/PV.5055

Security Council

Fifty-ninth year

Provisional

5055th meeting

Tuesday, 12 October 2004, 10 a.m.
New York

President:	Sir Emyr Jones Parry	(United Kingdom)
Members:	Algeria	Mr. Katti
	Angola	Mr. Constantino
	Benin	Mr. Adechi
	Brazil	Mr. Tarrisse da Fontoura
	Chile	Mr. Maquieira
	China	Mr. Li Junhua
	France	Mr. Poirier
	Germany	Mr. Pleuger
	Pakistan	Mr. Khalid
	Philippines	Mr. Mercado
	Romania	Mr. Suseanu
	Russian Federation	Mr. Konuzin
	Spain	Mr. Yáñez-Parnuevo
	United States of America	Mrs. Patterson

Agenda

The situation in Afghanistan

This record contains the text of speeches delivered in English and of the interpretation of speeches delivered in the other languages. The final text will be printed in the *Official Records of the Security Council*. Corrections should be submitted to the original languages only. They should be incorporated in a copy of the record and sent under the signature of a member of the delegation concerned to the Chief of the Verbatim Reporting Service, room C-154A.

04-54608 (E)

The meeting was called to order at 10.15 a.m.

Adoption of the agenda

The agenda was adopted.

The situation in Afghanistan

The President: I should like to inform the Council that I have received a letter from the representative of Afghanistan, in which he requests to be invited to participate in the consideration of the item on the Council's agenda. In conformity with the usual practice, I propose, with the consent of the Council, to invite that representative to participate in the discussion, without the right to vote, in accordance with the relevant provisions of the Charter and rule 37 of the Council's provisional rules of procedure.

There being no objection, it is so decided.

At the invitation of the President, Mr. Farhâdi (Afghanistan) took a seat at the Council table.

The President: In accordance with the understanding reached in the Council's prior consultations, I shall take it that the Security Council agrees to extend an invitation under rule 39 of its provisional rules of procedure to Mr. Hédi Annabi, Assistant Secretary-General for Peacekeeping Operations.

It is so decided.

I invite Mr. Annabi to take a seat at the Council table.

The Security Council will now begin its consideration of the item on its agenda. The Security Council is meeting in accordance with the understanding reached in its prior consultations.

At this meeting, the Security Council will hear a briefing by Mr. Hédi Annabi, Assistant Secretary-General for Peacekeeping Operations, to whom I give the floor.

Mr. Annabi: Last Saturday, 9 October, Afghans went to the polls to elect a President, for the first time in their history. That these elections should have taken place at all — against the backdrop of extremist threats, the very difficult terrain, adverse weather conditions in several provinces and other challenges — is in itself an achievement. But the impressive participation, the enthusiasm and pride of the women and men voting for the first time and the peaceful and orderly environment in which the electoral operation unfolded have made it a special event that augers well for the journey of the Afghans towards democracy.

Many international observers feared that the elections would be marred by violence. The fact that they were not is a tribute not only to the Afghan voters but also to the national army and police, who provided a safe environment with the assistance of the international security forces.

The elections, of course, were not perfect. Members will no doubt have read about the trouble experienced with the application of indelible ink, about the allegations of intimidation and about other irregularities. But, while the results of the election itself will not be known for a while, the popular verdict on the process itself is overwhelmingly positive.

I would like to begin with a very general and preliminary account of the elections. In most ways, they were a well-run operation, given the constraints of geography and security. Almost every polling station was opened on time. Polling staff acted professionally and were properly equipped. There were no major security incidents and, remarkably, no Afghan voter was killed during the polling.

The reports we have heard so far from observers, monitors, special guests, United Nations Assistance Mission in Afghanistan (UNAMA) staff in the field and individual Afghans reflect a high level of popular satisfaction with the conduct of the polling.

Initial estimates — and I stress that these are estimates — indicate a high turnout, despite poor weather conditions and a call by opposition candidates for a boycott, to which I will return in a moment.

The only serious problem that occurred during voting concerned the handling of the indelible ink. Polling stations were supplied with one of two products with which to ink voters' left thumbs: voter ink pens or ink sponge containers. Both products appear to have functioned satisfactorily when used properly. However, the voter ink pens could be confused with marker pens intended for marking ballot papers, and the ink sponge containers could be confused with a bottle of ink intended for replenishing stamp pads. It appears that polling officials did indeed confuse the products on many occasions. This

produced, in the early hours of polling, fast-flying rumours that the ink was in fact erasable and that the election was therefore compromised. Some polling staff decided to halt voting until they could receive clarification from the Joint Electoral Management Body (JEMB). The JEMB rapidly issued a decision that polling should continue, and it reissued instructions on how to properly use the ink. The problem was identified and resolved within the first hours of polling, and complaints had ceased by early afternoon. Voters continued to turn out in significant numbers throughout the day, and a number of polling sites actually extended their closing time from 4 p.m. to 6 p.m.

Despite the resolution of the problem and the evident enthusiasm of voters, 15 opposition candidates, at about 2 p.m. on 9 October, issued a statement calling for the suspension of the polling and declaring that the results of the election would not be legitimate. They cited a multiplicity of alleged irregularities, including allegations that JEMB staff were instructing people to vote for President Karzai, that candidate and party agents had been barred from some polling stations and that blank ballot papers were being distributed.

The JEMB rejected that demand as unjustified and stated that to shut down voting on the basis of unproven allegations by candidates would deny the fundamental right to vote to those who had not yet reached the polling centres. The JEMB acknowledged in its statement that there had been some technical problems and allegations of other irregularities but reminded the candidates that a complaints mechanism existed and that they would be able to participate fully in the investigation of the complaints.

As polling went on without incident, voters increasingly stated their opposition to the boycott, and the position of those advocating the boycott weakened. The day after polling, a number of candidates began to suggest that they were not actually boycotting the election results but that they felt a strong need for an independent investigation into the alleged irregularities.

The JEMB took that issue seriously and requested UNAMA to nominate a panel of independent electoral experts to assist it in its investigations. The electoral law, it should be noted, empowers the JEMB to establish such a panel. Yesterday, 11 October, the Board announced the establishment of three-member panel that will fully investigate the candidates' protests and present recommendations to the JEMB for its adjudication. The Board asked the presidential candidates to submit their detailed complaints by 6 p.m. today, Kabul time.

I would like to focus for a moment on the question of security, given our longstanding and often-stated concern that the election presented a number of very vulnerable targets. In the end, security conditions on election day greatly exceeded our expectations. Nonetheless, there were some incidents. In several areas, particularly in the south and east, rockets were fired at or near polling centres. In the central highlands, there was a case of polling station workers being assaulted by voters who had attempted to engage in multiple voting. In Uruzgan province, insurgents destroyed a bridge linking one community to a village centre, with the aim of preventing people from travelling to the centre to vote. There were several reports of intimidation, though none so far is considered to have greatly affected the voting. Allegations are being processed, and, as I have already said, they will be investigated.

Credit must be given to the Electoral Security Operations Centre, which was established in cooperation with the JEMB and national and international security forces. That mechanism allowed intelligence from various sources to be pooled and shared, and it allowed particular threats to be responded to as necessary by the approximately 120,000 Afghan, coalition and International Security Assistance Force (ISAF) forces that were present to provide security during the election. We are very grateful to ISAF and the coalition in particular for the additional forces that they deployed. Those forces gave Afghan voters confidence and surely deterred a number of incidents. We believe that we need to build on that success and that those forces should remain in Afghanistan until the parliamentary elections, scheduled to be held next spring, are over.

The presidential electoral process, of course, is not over, and attacks could still occur. Polling has ended, but a number of technical tasks remain to be performed. Ballot boxes are being transported to the counting centres in the eight main population centres of Afghanistan. Most have now arrived, despite some attacks on convoys, including one that killed three Afghan policemen in Uruzgan province. The reconciliation of votes is under way. That means that

the number of ballots in each ballot box is being checked against the number of people who appeared at the polling station and the number of ballots that were used at that station. Once reconciliation is complete, the counting of ballots will begin, in the presence of observers and party agents. We expect the counting process to continue for some two to three weeks. The results will be transmitted every hour to the Media Results Centre, where they will be published. Once the counting is completed, and if the JEMB concludes after its investigations that the irregularities reported did not affect the overall credibility of the election, the results will be announced.

An important part of the election was the out-of-country voting in Iran and Pakistan, conducted on behalf of the JEMB by the International Organization for Migration (IOM). There, as in Afghanistan, order was kept, voters turned out, and balloting took place under secure conditions. Initial estimates suggest that some 540,000 Afghans voted at the 1,657 polling stations set up in Pakistan, representing a satisfactory turnout of about 75 per cent. In Iran, an estimated 260,000 voters voted at 1,126 polling stations. That represents approximately 50 per cent of estimated eligible voters. Given the abbreviated time for public education in Iran, as well as the fact that in Iran — as opposed to Pakistan and Afghanistan — polling fell on a working day for many voters, that is also a satisfactory participation rate. With a total of about 800,000 Afghans voting outside Afghanistan, the out-of-country exercise represents the largest-ever refugee vote. This was organized in only 78 days. The IOM and, in particular, its teams in Pakistan and Iran deserve significant praise for that achievement.

I also want to seize this opportunity to commend the Governments of Iran and Pakistan for the commitment they have shown to the process.

An important element in enhancing the credibility of the election was the presence of observers. In Afghanistan, 5,321 domestic and 121 international observers were present on polling day. The European Union and the Organization for Security and Cooperation in Europe sent election support teams, both of which have issued generally positive preliminary statements. The participation of domestic observers through the Free and Fair Elections Foundation of Afghanistan was particularly welcome and we are pleased that the domestic observation effort was as thorough as it was.

Equally important for the credibility of the process was the presence of political party and candidate agents. There were 22,000 party agents and 52,000 candidate agents accredited, and agents were present in every province of Afghanistan. Many of those agents continued to observe the polling even after their candidates had called a boycott and requested them to leave the polling stations. The agents continue to play an active role in observing the counting process and by doing so have contributed to strengthening the credibility of the process.

As members know, before the election, much effort went into creating an environment in which a credible, meaningful election was possible. A list of the benchmarks to guide that effort was circulated to the Security Council in August last year. I would like to emphasize one of those benchmarks today: the disarmament, demobilization and reintegration (DDR) process. It is clear that much more progress is needed on DDR before the parliamentary elections are held. At the same time, the electoral process itself has helped to add momentum to disarmament efforts.

A specific pre-election DDR framework was finalized through a presidential decree signed on 7 September. Additional momentum was gained from the requirement that all parties sever their links to military formations in order to be registered for the elections. As a result, the Ministry of Defence, as requested by the Joint Electoral Management Body on 10 August, appointed new and non-factional commanders to three core units affiliated with electoral candidates: President Karzai's running mate Khalili and presidential candidates Muhaqqiq and Dostum.

The political momentum generated by the electoral process has had an evident effect on the demobilization of soldiers, as well as on the defactionalization of military forces. By the end of September, about 5,480 soldiers had entered the DDR programme under the new plan, representing about 40 per cent more than had been disarmed since the programme started in October 2003. By election day, more than 22,500 personnel had been disarmed and 2,780 serviceable heavy weapons had been disabled or cantoned. That corresponds to 33 per cent of estimated actual personnel targets and to 68 per cent of the heavy weapons target.

Those results suggest that, just as disarmament is an important ingredient in the holding of credible

elections, the electoral process itself helps advance disarmament. That is one more reason to ensure that the international community continues to provide assistance to both processes, particularly in the context of the upcoming parliamentary elections scheduled for next spring. Planning and budgeting for the elections will begin shortly and the plans will be made available as soon as they are finalized.

In conclusion, I have tried to present some very preliminary observations on a process that is still under way. We should guard against complacency and be aware that difficult challenges continue to lie ahead, but the past few days — and first and foremost the patience, resilience and determination demonstrated by Afghan women and men — are a source of optimism that the election will result in achieving a central objective of the Bonn Agreement.

The President: Consultations among members of the Security Council continue on the text of a presidential statement. In accordance with the understanding reached in the Council's prior consultations, I now invite Council members to informal consultations to continue our discussions.

The meeting rose at 10.40 a.m.

United Nations S/PV.5056

Security Council

Fifty-ninth year

Provisional

5056th meeting

Tuesday, 12 October 2004, 11.30 a.m.

New York

President	Sir Emyr Jones Parry	(United Kingdom)
Members	Algeria	Mr. Katti
	Angola	Mr. Constantino
	Benin	Mr. Zinsou
	Brazil	Mr. Tarrisse da Fontoura
	Chile	Mr. Donoso
	China	Mr. Li Junhua
	France	Mr. Poirier
	Germany	Mr. Seidenberger
	Pakistan	Mr. Akram
	Philippines	Mr. Chuasoto
	Romania	Mr. Suseanu
	Russian Federation	Mr. Denisov
	Spain	Mr. de Palacio España
	United States of America	Mr. Fendrick

Agenda

The situation in Afghanistan

This record contains the text of speeches delivered in English and of the interpretation of speeches delivered in the other languages. The final text will be printed in the *Official Records of the Security Council*. Corrections should be submitted to the original languages only. They should be incorporated in a copy of the record and sent under the signature of a member of the delegation concerned to the Chief of the Verbatim Reporting Service, room C-154A.

04-54644 (E)

The meeting was called to order at 11.30 a.m.

Adoption of the agenda

The agenda was adopted.

The situation in Afghanistan

The President: Pursuant to the decision taken at the 5055th meeting, I invite the representative of Afghanistan to take a seat at the Council table, in accordance with the relevant provisions of the Charter and rule 37 of the Council's provisional rules of procedure.

At the invitation of the President, Mr Farhādi (Afghanistan) took a seat at the Council table.

The President: The Security Council will now begin its consideration of the item on its agenda. The Council is meeting in accordance with the understanding reached in its prior consultations.

Following consultations among members of the Security Council, I have been authorized to make the following statement on behalf of the Council.

"The Security Council welcomes the presidential election that took place on 9 October 2004 in Afghanistan, stresses its historic importance as a milestone in the political process, and congratulates the millions of Afghan voters, many of them women and refugees, who showed their commitment to democracy by participating in the first popular election of their head of State. The Council welcomes further the broad political representation, as manifested by the 18 presidential candidates. The Council commends the Afghan National Police and the Afghan National Army for their role, with the assistance of the international security forces, in bolstering security during the election period.

"The Security Council appreciates the effort of the Joint Electoral Management Body (JEMB) and the United Nations Assistance Mission in Afghanistan (UNAMA) for their excellent achievement in the preparations of the presidential election. The Security Council appreciates the JEMB's efforts to address any candidate's concerns and to further enhance the transparency of the electoral process, and looks forward to a final statement.

"The Security Council urges the Government of Afghanistan, with the help of the international community, to continue to confront the challenges that remain in Afghanistan, including security, timely preparation of the parliamentary elections in April 2005, the reconstruction of institutions, the fight against narcotics, and the disarmament, demobilization, and reintegration of Afghan militias.

"The Security Council calls upon the Afghan authorities to plan and carry out without delay inclusive parliamentary elections and calls upon the international community to support them in completing the electoral process set out in the Bonn Agreement.

"The Security Council pledges its continued support for the Government and people of a sovereign Afghanistan as they rebuild their country, strengthen the foundations of constitutional democracy and assume their rightful place in the community of nations, and calls upon the international community, with the United Nations in a central role, to support them in these efforts."

This statement will be issued as a document of the Security Council under the symbol S/PRST/2004/35.

The Security Council has thus concluded the present stage of its consideration of the item on its agenda.

The meeting rose at 11.35 a.m.

United Nations S/PV.5057

Security Council

Fifty-ninth year

Provisional

5057th meeting

Thursday, 14 October 2004, 6.10 p.m.

New York

President:	Sir Emyr Jones Parry	(United Kingdom)
Members:	Algeria	Ms. Baaziz
	Angola	Mr. Lucas
	Benin	Mr. Zinsou
	Brazil	Mr. Tarrisse da Fontoura
	Chile	Mr. Zalaquett
	China	Mr. Li Junhua
	France	Mr. Poirier
	Germany	Mr. Rotenberg
	Pakistan	Mr. Khalid
	Philippines	Mr. Mercado
	Romania	Mr. Motoc
	Russian Federation	Mr. Dolgov
	Spain	Mr. García de Viedma
	United States of America	Mr. Fendrick

Agenda

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Establishment of the list of candidates for Permanent Judges

This record contains the text of speeches delivered in English and of the interpretation of speeches delivered in the other languages. The final text will be printed in the *Official Records of the Security Council*. Corrections should be submitted to the original languages only. They should be incorporated in a copy of the record and sent under the signature of a member of the delegation concerned to the Chief of the Verbatim Reporting Service, room C-154A.

04-55552 (E)

The meeting was called to order at 6.10 p.m.

Adoption of the agenda

The agenda was adopted.

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Establishment of the list of candidates for Permanent Judges

The President: The Security Council will now begin its consideration of the item on its agenda. The Council is meeting in accordance with the understanding reached in its prior consultations.

Members of the Council have before them document S/2004/813, which contains the text of a draft resolution prepared in the course of the Council's prior consultations.

I wish to draw the attention of members to document S/2004/754, containing the text of a letter dated 21 September 2004 from the Secretary-General addressed to the President of the Security Council.

It is my understanding that the Security Council is ready to proceed to the vote on the draft resolution (S/2004/813) before it. If I hear no objection, I shall now put the draft resolution to the vote.

There being no objection, it is so decided.

A vote was taken by show of hands.

In favour:

Algeria, Angola, Benin, Brazil, Chile, China, France, Germany, Pakistan, Philippines, Romania, Russian Federation, Spain, United Kingdom of Great Britain and Northern Ireland, United States of America

The President: There were 15 votes in favour. The draft resolution has been adopted unanimously as resolution 1567 (2004).

The Security Council has thus concluded the present stage of its consideration of the item on its agenda.

The meeting rose at 6.15 p.m.